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# Vol. I

## TRANSCRIPT OF RECORD

(Pages 1 to 380)

## Supreme Court of the United States

OCTOBER TERM, 1946

## No. 731

ROY BARTELS, ED BARTELS, CARL BARTELS AND JUSTIN CONLON, D.B.A. CRYSTAL BALLROOM, PETITIONERS,

*vs.*

E. H. BIRMINGHAM, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE STATE OF IOWA, GRIFF WILLIAMS, ET AL.

## No. 732

LARRY V. GEER AND MARGARET GEER, D.B.A. LARRY GEER BALLROOMS, PETITIONERS,

*vs.*

E. H. BIRMINGHAM, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE STATE OF IOWA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 29, 1946.

CERTIORARI GRANTED JANUARY 6, 1947.

# United States Circuit Court of Appeals

## EIGHTH CIRCUIT.

No. 13,124.
CIVIL.

E. H. BIRMINGHAM, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE STATE OF IOWA,
APPELLANT,

vs.

ROY BARTELS, ED BARTELS, CARL BARTELS, AND JUSTIN CONLON, d/b/a CRYSTAL BALLROOM;
APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED JULY 7, 1945.

No. 13,125.
CIVIL.

E. H. BIRMINGHAM, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE STATE OF IOWA,
APPELLANT,

vs.

LARRY V. GEER AND MARGARET GEER, d/b/a LARRY GEER BALLROOMS,
APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED JULY 7, 1945.

No. 13,127.
CIVIL.

GRIFF WILLIAMS, BILL CARLSEN, TINY, HILL, BOYD RAEBURN, BUDDY FISHER AND PAUL MOORHEAD, INTERVENERS,
APPELLANTS,

vs.

ROY BARTELS, ED BARTELS, CARL BARTELS, AND JUSTIN CONLON, d/b/a CRYSTAL BALLROOM,
APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED JULY 10, 1945.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1946, of said Court, before the Honorable Archibald K. Gardner, the Honorable Joseph W. Woodrough and the Honorable Harvey M. Johnsen, Circuit Judges.

Attest:

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the 7th day of July, A. D. 1945, transcript of records pursuant to appeals from the District Court of the United States for the Southern District of Iowa in the cases of E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa, Appellant, vs. Roy Bartels, et al., Appellees, and E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa, Appellant, vs. Larry V. Geer, et al., Appellees, and on the 10th day of July, A. D. 1945, transcript of record pursuant to appeal from the said District Court in the case of Griff Williams, et al., Appellants, vs. Roy Bartels, et al., Appellees, were filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, which said transcripts as prepared and printed, pursuant to designation and stipulation, under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, are in the words and figures following, to-wit:

[fol. 1] Pleas and Proceedings before the Honorable Chas. A. Dewey, Judge of the District Court of the United States for the Southern District of Iowa, in certain causes lately pending in the Central Division of said Court, wherein E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa is Appellant, and Roy Bartels, Ed Bartels, Carl Bartels and Justin Conlon, d/b/a/ Crystal Ballroom are Appellees; Griff Williams, Bill Carlsen, Tiny Hill, Boyd Raeburn, Buddy Fisher and Paul Moorhead are Appellants and Roy Bartels, Ed Bartels, Carl Bartels and Justin Conlon, d/b/a/ Crystal Ballroom are Appellees, and E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa is Appellant and Larry V. Geer and Margaret Geer, d/b/a/ Larry Geer Ballrooms are Appellees.

Be It Remembered, That on the 3rd day of January, A. D. 1944, there was filed in the District Court of the United States for the Southern District of Iowa, Central Division, a Complaint in the case of Roy Bartels, Ed Bartels, Carl Bartels and Justin Conlan, d/b/a/ Crystal Ballroom, Plaintiffs, vs. E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa, Defendant, which case was numbered 294-Civil Action, Central Division, said complaint being in words and figures as follows:

[fol. 2] Complaint.

In The District Court Of The United States In And For The Southern District Of Iowa, Central Division.

Roy Bartels, Ed Bartels, Carl Bartels and Justin Conlan, d/b/a/ Crystal Ballroom, Plaintiffs,

No. 294 vs. Civil Action

E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa, Defendant.

Plaintiffs for their cause of action allege:

I.

Plaintiffs are residents and citizens of Iowa, engaged in business in the County of Dubuque, Iowa, as a copartnership doing business under the name of the Crystal Ballroom.

II.

At all times mentioned herein the defendant was and still is the duly appointed, qualified and acting Collector of Internal Revenue of the United States of America for the District of Iowa.

III.

This action arises under the Act of Congress known as the Federal Insurance Contributions Act, approved February 10, 1939, as Subchapter A. of Chapter 9 of the Internal Revenue Code (53 Stat. 175).

IV.

That during the years 1940, 1941 and 1942, Plaintiffs operated a ballroom in Dubuque, Iowa, known as the Crystal Ballroom, wherein were held dances for the enter- [fol. 3] tainment and amusement of the public for which an admission charge was made; that music for such dances was furnished by traveling orchestras which were permanent organizations engaged in the business of furnishing music for dance engagements for ballroom operators, fraternal and social clubs, charitable organizations, lodges, American Legion Posts, police and fire departments and college and high school classes, most of such engagements being for one evening's duration.

V.

That one of such traveling orchestras which furnished dance music for engagements at said Crystal Ballroom on October 13, 1940, and September 1, 1941, was an orchestra known in the entertainment world since the year 1935 as Griff Williams and His Orchestra, which consisted of from twelve to fourteen musicians under the leadership of Griff Williams; that each of such engagements was booked for said orchestra by the Music Corporation of

America, a booking agent that Griff Williams had made his exclusive representative for the purpose of booking engagements for his orchestra, for which services such agent was paid a commission by Griff Williams; that in order to secure such orchestra for said engagement on October 13, 1940, Plaintiffs were required by said Music Corporation of America to execute the contract, a copy of which is attached hereto, marked Exhibit "A" and by this reference made a part hereof, and in order to secure such orchestra for said engagement on September 1, 1941, Plaintiffs were required by said Music Corporation of America to execute the contract, a copy of which is attached hereto, marked Exhibit "B" and by this reference made a part hereof.

VI.

Under date of June 24, 1942, Plaintiffs caused a letter to be addressed and mailed to the Commissioner of Internal Revenue at Washington, D. C., in which letter said Commissioner was specifically requested to rule whether Griff Williams and the members of his orchestra were the employees of the operator of the Crystal Ballroom under [fol. 4] the Federal Insurance Contributions Act during each of the engagements by said orchestra at such ballroom; that although said Commissioner received said letter within a few days after the same was mailed, plaintiffs have never in the period of more than seventeen months which have elapsed since that time received a ruling as requested in such letter.

VII.

That in a further attempt to secure a ruling from the Commissioner of Internal Revenue as to whether Griff Williams and the members of his orchestra were the employees of the Plaintiffs under the Federal Insurance Contributions Act on the two occasions when said orchestra performed its aforesaid engagements at the Crystal Ballroom, Plaintiffs, on or about May 5, 1943, filed in the office of the Collector of Internal Revenue at Des Moines, Iowa, a Supplemental Employer's Tax Return on Form SS-1a under said Act, attaching to said return Plaintiffs' check in the sum of $26.98; that included in said return and payment were employer's and employee's taxes com-

puted under the Federal Insurance Contributions Act with respect to sums paid for the services of not only Griff Williams and His Orchestra for the two aforesaid engagements but also several other orchestras for engagements at said Crystal Ballroom during the years 1941 and 1942, names of such orchestras and the dates of their respective engagements being as follows:

| Name | Date |
|---|---|
| Bill Carlsen and His Orchestra | August 17, 1941 |
| Tiny Hill and His Orchestra | September 28, 1941 |
| Boyd Raeburn and His Orchestra | October 5, 1941 |
| Buddy Fisher and His Orchestra | November 23, 1941 |
| Paul Moorhead and His Orchestra | January 18, 1942 |

That in order to secure the services of each of the above orchestras, Plaintiffs were required to execute the same form of contract as that contained in the contract of which Exhibit "B" attached hereto is a copy.

That the employee's tax included in said payment of $26.98 was not withheld from any sums paid said orchestras [fol. 5] but was paid by Plaintiffs with their own personal funds.

VIII.

That on or about May 29, 1943, Plaintiffs filed with the Collector of Internal Revenue at Des Moines, Iowa, on Form 843, a claim for refund of said taxes amounting to $26.98; that no determination has ever been made by the Commissioner of Internal Revenue with respect to said claim; that more than six months has elapsed since the filing of said claim for refund and that Plaintiff is at the date hereof authorized by law to bring this action against Defendant for the recovery of said amount.

IX.

That Plaintiffs are entitled to have said taxes refunded to them for the reason that Plaintiffs were not the employers of the leader and members of any of the hereinabove named orchestras within the meaning of the Federal Insurance Contributions Act on the occasion of its engagement for Plaintiffs at said Crystal Ballroom and, hence, no taxes thereunder were due from the Plaintiffs

with respect to the sum of money which it paid said orchestra in performing said engagement; that the leader of each of such orchestras was an independent contractor and he, and not Plaintiffs, was the employer of the members of his orchestra for the purposes of the Federal Insurance Contributions Act and solely responsible for the taxes imposed by that enactment with respect to the sums of money received by the members of his orchestra for their services in performing the orchestra's engagement at said Crystal Ballroom.

X.

That Griff Williams, on the occasion of his orchestra's engagement of October 13, 1940, for Plaintiffs, was an independent contractor and the employer of the members of his orchestra for the reasons that he was engaged in an independent business for profit and he alone, and not Plaintiffs:

[fol. 6] (1) Hired and discharged the members of his orchestra and determined the cause therefor.

(2) Determined the time, place and amount of payment of the compensation of such members and was liable to the members of his orchestra for such compensation irrespective of whether he received the contract price for said engagement.

(3) Had the right to control the details and manner of the performances of the orchestra members and exercised such control in that he:

(a) dictated the style of music, length and tempo, volume, selections and time for feature performances.

(b) determined the instrumentation.

(c) determined the attire of the members.

(d) either provided or arranged for the transportation of the members to and from said engagement.

(e) told the members where and when to report for the performance of the engagement.

(f) determined the time and place of rehearsals and numbers to be rehearsed, and at such rehearsals directed

the members in their efforts to produce the type of music which he desired the orchestra to play.

(g) determined placing of musicians on the bandstand.

(h) selected and compiled the music library from which the dance pieces were played.

(i) saw to it that the orchestra, in the rendition of its [fol. 7] services, carried out his ideas of showmanship and the type and style of music to be played.

That Plaintiffs, in executing the contract of which Exhibit "A" attached hereto is a copy, were not concerned with and did not know, the names of the members of Griff Williams' orchestra or the amounts of compensation received by them; that Plaintiffs were familiar with the reputation and special quality of music of such orchestra and relied on Griff Williams to furnish an organization composed of musicians selected, rehearsed and capable of performing such quality of music.

XI.

That, except for the form of contract of which Exhibit "B" attached hereto is a copy, the facts and circumstances relating to Griff Williams and the members of his orchestra and its performance of the engagement on September 1, 1941 for Plaintiffs at said Crystal Ballroom were identical with the facts and circumstances relating to Griff Williams and the members of his orchestra and its performance of the engagement of October 13, 1940, at said ballroom; that although said contract purports to create the relationship of employer and employee between Plaintiffs and Griff Williams and the members of his orchestra, it did not and could not have that effect for the following reasons:

(1) Plaintiffs and Griff Williams and the members of his orchestra could not change their true relation, as shown by the actual facts, through mere nomenclature and artful language in a written contract, particularly where such contract represents a skillful, painstaking and ingenious attempt to avoid liability for taxes imposed by legislative enactment; that the contract of which Exhibit "B" attached hereto is a copy is such a contract, having been [fol. 8] prepared by the American Federation of Mu-

sicians for the express purpose of endeavoring to shift the responsibility for the payment of Social Security and employment taxes from the leader or owner of an orchestra, as the actual employer of its members, to the person engaging such orchestra's services; that such purpose is shown not only by the terms of the contract itself, but also by the contents of a notice given to all locals of the American Federation of Musicians on May 1, 1941 and signed by James C. Petrillo and Fred W. Birnbach, President and Secretary respectively of such Federation, a copy of which notice is attached hereto marked Exhibit "C" and by this reference made a part hereof.

(2) That the actual practice followed by Plaintiffs and Griff Williams and His Orchestra during its second engagement at the Crystal Ballroom was the same as the actual practice followed by them during such orchestra's first engagement at said ballroom, which fact shows that neither Plaintiffs nor Griff Williams and the members of his orchestra ever intended the provision therein relating to the control of the orchestra's services in fact to be operative.

(3) That said contract was used by Music Corporation of America, Griff Williams and Plaintiffs for the purpose of remaining in good standing with the American Federation of Musicians and not for the purpose of reflecting the actual facts pertaining to the engagement.

(4) Under Section 29 of Article X of the By-Laws of the American Federation of Musicians in effect during the [fol. 9] year 1941 and at all times since 1941, which by-laws are made a part of said contract by an express provision therein, Griff Williams and the sidemen in his orchestra, as members of the Federation, were prohibited under penalty of expulsion from said Union from accepting engagements with Plaintiffs and hence no relationship of employer and employee could exist between Plaintiffs and the sidemen in Griff Williams' orchestra. A true copy of Section 29 of Article X of said By-Laws is attached hereto, marked Exhibit "D" and by this reference made a part hereof.

(5) The members of Griff Williams' orchestra are not described in said contract with sufficient certainty to make them parties thereto.

(6) The provision in the contract purporting to vest control of the orchestra's services in Plaintiffs is so indefinite that unless it be considered as referring to control over results to be accomplished under the contract, the provision is utterly meaningless and of no effect whatever.

XII.

That, except for the form of contract, the facts and circumstances relating to each of the other orchestras named in Paragraph VII hereof in the performance of its said engagement for Plaintiffs at the Crystal Ballroom were substantially the same as the facts and circumstances relating to Griff Williams and the members of his orchestra in the performance of its engagement of October 13, 1940 for Plaintiffs at the Crystal Ballroom as alleged in Paragraph X hereof, and hence, the leader of each of such orchestras was an independent contractor and the employer [fol. 10] of the members of his orchestra for the purposes of the Federal Insurance Contributions Act; that said form of contract did not have the effect of creating the relationship of employer and employee between Plaintiffs and the leader and the members of any of said orchestras for the same reasons as those set forth in Paragraph XI hereof in support of Plaintiffs' allegation that the form of contract of which said Exhibit "B" is a copy did not have the effect of creating such relationship between Plaintiffs and Griff Williams and the members of his orchestra on the occasion of its engagement of September 1, 1941 for Plaintiffs at the Crystal Ballroom.

Wherefore, Plaintiffs demand judgment against the Defendant in the sum of $26.98, together with interest at the rate of 6% per annum from and after the 5th day of May, 1943, and costs and such other relief as the Court may decree.

THOMAS B. ROBERTS,
CLYDE B. CHARLTON,
Attorneys for Plaintiff,
4th Floor, Empire Bldg.
Des Moines, Iowa.

[fol. 11] Exhibit "A"

Music Corporation of America No. 1279 CO

Representing September 14, 1940 RF:MS

Griff Williams And His Orchestra .....
(Attraction) (No. of artists or musicians)

The undersigned employer engages the attraction above named and attraction agrees to perform upon the following terms:

Date(s) of engagement October 13, 1940

Place of engagement Crystal Ballroom

Street Address.....City and State Dubuque, Iowa

Hours And Special Instructions:

Attraction agrees to play or perform for three consecutive hours (with usual intermissions) beginning at 9:00 P. M. Standard Time at place of engagement, unless otherwise herein provided. Place Of Engagement Must Be Specified.

Deposit To Be Made By Money Order, Bank Draft Or Cashiers Check.

Hours: 9 P. M. to 1 o'clock A. M.

"Management, Music Corporation Of America"

Must appear in all announcements and advertising matter of employer wherever the name of the attraction is used.

Privilege Sixty Percent Of Gross Receipts, Guarantee

Price agreed upon $300.00

Deposit $150.00 (Certified)

Received $150.00
9-16 1940
M. C. A. by M. A.

Check, Money Order, or Bank Draft) Balance to be paid in United States currency to Attraction Leader of Music Corporation of America, on its demand before 10:00 P. M. on date of engagement, or earlier on his or its demand.

Overtime Charge.....

It is agreed that all the laws, rules, and regulations of the American Federation of Musicians are a part of this contract. Employer agrees to pay the difference, if any, between the compensation herein provided and a sum equal to five (5%) percent over the Federation scale in effect. Terms of resale of attraction by Employer must comply with regulations and prices of the Federation Local wherein attraction is to perform. In signing this contract, the Employer acknowledges his (her or their) authority to do so, and also hereby assumes liability for the amount stated herein. Agreement of attraction to perform is subject to detention by sickness, accident, or accident to means of [fol. 12] transportation used by attraction, or by any act or regulation of any public authority, civil tumult, strike, epidemic, serious interruption of transportation services or any legitimate or unavoidable cause, strikes, Acts of God, and conditions beyond control of such attraction or representative. There are no exceptions to this contract unless stipulated in writing. No deductions are to be made for any reason whatsoever.

The Employer agrees that the business agent of the Musicians Local in whose jurisdiction this engagement is being played may have access to the function, for the purpose of conferring with the Musicians playing this engagement.

Music Corporation of America, or the undersigned employee on its behalf, acts only as agent and does not assume any obligations whatsoever, including but not limited to, any obligation imposed under and by virtue of the Social Security Act of the United States in connection with the services rendered ~~and assumed hereunder by the Attraction.~~

No part of the performance of attraction shall be broadcast by radio or otherwise.

If the compensation of Attraction is on a guarantee and percentage basis, then employer agrees:

~~(A)~~ to use no passes except to bonafide newspaper representatives and not to reduce the stipulated dancing or admittance charges as herein fixed.

(B) that the dancing charge shall be

Per Couple $.....; Male $.....; Female $.....; Spec. $.....

(C) that the additional (gate) charge (if any) for admittance shall be:

Per Couple $.....; Male $.....; Female $.....; Spec. $.....

(d) that the charge for auto parking shall be $.....; for clothes checking $.....

(E) M. C. A. shall have the privilege of using its own tickets exclusively, and also of appointing its own ticket takers, who shall take tickets at all extrances.

Accepted by Employer Crystal Ballroom by Roy Bartels

Street Address..... City and State Dubuque, Iowa

Phone.....

---

Do Not Write Below This Line

Return All Copies Signed To

Attraction Sign Here.....

MUSIC CORPORATION OF AMERICA,
430 N. Michigan Avenue
Chicago

By Music Corporation Of America
Authorized Representative

Per /s/ Russell Facchine

American Federation of Musicians

License No. 1
Form 1N

[fol. 13] Exhibit "B"

Received
Chicago Office
Music Corporation of
America
1941 Jul 31 PM 1:33

Contract Blank

Music Corporation Of America

16 Old Bond St., W. I.
London
Phone Regent 6506

745 Fifth Avenue
New York
Wickersham 2-8900

111 Sutter Street
San Francisco
Phone Exbrook 8922

Union Commerce Bldg.
Cleveland
Phone Cherry 6010

430 N. Michigan Ave.
Chicago
Phone Delaware 1100

Tower Petroleum Bldg.
Dallas
Phone 2-1448

M C A Bldg.
Beverly Hills
Bradshaw 23211

This Contract for the personal services of musicians, made this 26 day of July, 1941 between the undersigned employer (hereinafter called the employer) and 13 musicians (including leader) (hereinafter called employees) represented by the undersigned representative.

Witnesseth, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of Griff Williams, according to the following terms and conditions:

Place of employment Crystal Ballroom, Dubuque, Iowa

Date(s) of employment September 1, 1941

Hours of employment 9 P M to 1 A M

Price agreed upon $350 Guarantee With A 60% Privilege Of Gross Receipts (Terms and Amount)

(Rec'd $125.00 7/31 M. E.)

To be paid $125 Deposit, Balance By 11 P M Night Of Engagement (Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

[fol. 14] It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said em-

ployer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Crystal Ballroom
By Roy Bartels

Street Address 1545 Auburn St.

City or State Dubuque, Iowa

Phone.....

Accepted by Employer Roy Bartels

Accepted .....
(orchestra leader)

By /s/ James Breyley

MUSIC CORPORATION OF AMERICA
(Representatives of Employees)

Form B

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[fol. 15] Exhibit "C".

To All Locals of the
American Federation of Musicians

Enclosed herewith you will find a sample copy of the new contract form adopted by the International Executive Board to cover all engagements excepting those played in theatres and radio stations and with grand opera companies and symphony orchestra.

This contract is the one which has been adopted by the Internation Executive Board for the purpose of protecting our members under the Social Security Laws and upon which favorable decisions have been received by our members from the Internal Revenue Department.

This contract and none other must be used on all such engagements on and after June 1, 1941. Any member or any officer who assists a member in preparing a contract on any other form will be in violation of the laws of the

American Federation of Musicians and will be subject to charges for said violation. All engagements booked by licensed agencies must be contracted on these forms.

A supply of these contracts may be secured from the International Secretary's Office.

Kindly be governed accordingly.

Fraternally yours,

JAMES C. PETRILLO,

President, A. F. of M.

Attest:

Fred W. Birnbach,

Secretary, A. F. of M.

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[fol. 16] Exhibit "D".

Section 29 of Article X of By-Law of American Federation of Musicians of the United States and Canada:

"Members of the Federation are only permitted to accept, solicit or negotiate engagements to play in bands or orchestras from members who contract to furnish bands or orchestras, never from the employers or the agents of such to whom the band or orchestra is furnished, provided that in states or provinces where laws exist, which prescribe a different method of contracting, or where the provisions of law are such that to contract as above prescribed would be contrary to the interests of members, Locals are authorized to establish such method of contracting as may best conserve the interest to members. However, members may accept engagements from traveling theatre company managements direct, provided their contract, in addition to the signatures of the contracting parties, is countersigned by the musical director of the company or the member of the Federation who engages the members for the company. Furthermore, members may contract with symphony orchestra management direct in conformity with all Local and Federation laws.

"If a member violates the above, such action shall constitute his resignation from membership in such Locals where he held membership, and in the American Federation of Musicians."

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[fol. 17] (Amendment to Complaint in Case No. 294 Civil Action.)

Filed in U. S. District Court March 22, 1944.

Plaintiffs hereby amend their complaint on file herein in the following particulars:

1. By adding to Paragraph VIII the following:

That subsequent to the filing of the Complaint herein, Plaintiffs received from the Treasury Department a ruling holding that with respect to the services performed by Griff Williams and His Orchestra for Plaintiffs on October 13, 1940, Griff Williams and the members of his orchestra were not the employees of the Plaintiffs, but that the individuals comprising Mr. Williams' orchestra were his employees for federal employment tax purposes. Said ruling further held that with respect to the services performed by Griff Williams and his Orchestra for Plaintiffs on September 1, 1941, Griff Williams and the members of his orchestra were employees of the Plaintiffs for purposes of the taxes in question.

That thereafter Plaintiffs were notified by the Treasury Department that their claim in the amount of $6.00, representing the federal employment taxes paid with respect to the sum received by Griff Williams and His Orchestra for services in performing said engagement of October 13, 1940, was allowed; and the balance of Plaintiffs' claim in the amount of $20.98, representing federal employment taxes paid with respect to sums paid by Plaintiffs to the other orchestras involved in said claim for refund, was disallowed; that accompanying such notice was a check of the Treasurer of the United States for the amount of refund, which check Plaintiffs cashed and received the money therefor.

2. By striking sub-paragraph (4) from Paragraph XI and inserting in lieu thereof the following:

(4) Under Section 29 of Article X of the By-laws of the American Federation of Musicians in effect during the year 1941 and at all times since 1941, which by-laws are made a part of said contract by an express provision therein, the sidemen in Griff Williams' orchestra, as members of such Federation, were prohibited under penalty of ex-

pulsion from said Union from accepting engagements with [fol. 18] Plaintiffs and hence no relationship of employer and employee could exist between Plaintiffs and said sidemen. A true copy of Section 29 of Article X of said By-laws is attached hereto, marked Exhibit "D" and by this reference made a part hereof.

3. By adding to Paragraph XI additional sub-paragraphs as follows:

(7) That said contract was not executed by the sidemen of Griff Williams' orchestra or any agent authorized by such sidemen to execute the same for them; that although said contract recites that it was accepted by the Music Corporation of America as "representative of the employees", none of said sidemen ever authorized said Music Corporation of America, either orally or by power of attorney as required by Section 48 of Article X of the By-laws of the American Federation of Musicians, to accept such contract for them, which By-law made a part of the said contract by an express provision therein recites:

"Members of the American Federation of Musicians who accept engagements for bands or orchestras must in person sign their contracts for same or give some agent power of attorney to sign their names."

(8) That although the language of said contract purports to designate the relationship between Plaintiffs and Griff Williams and the members of his orchestra as that of employer and employee, the language of certain By-laws of the American Federation of Musicians in force during the years 1940, 1941 and 1942, and made a part of the contract by an express provision therein, contradict and negative such designation by repeated references to the leader as the employer of the members of his orchestra. Such By-laws are as follows:

Section 45 of Article X: "Any member, leader or contractor employing members of the A. F. of M. on any traveling, location or out-of-town engagement shall employ only such members who are in good standing in their respective Locals and carry their Local Union Cards paid up to date."

Section 48 of Article X: "All collections for the engage-
[fol. 19] ment must be made by the member who furnishes the orchestra and not by the agent. Members of the orchestra must be paid by the contracting member or leader of the band or orchestra and not by the agent.

* * * Leaders, their agents or contracting members are prohibited from furnishing singers free of charge on any and all engagements."

Section 10 I of Article XIII: "In the selecting of the members of the orchestra, the leader or manager of the same need not confine himself to membership of the Local in whose jurisdiction the orchestra is organized."

Section 10 K of Article XIII: "All contracts between leaders and members of traveling dance orchestras wherein a specified number of weeks is not named can be cancelled by either party giving two weeks' notice to the other."

Section 12 of Article XIII: "Any member, leader or contractor employing members of the American Federation of Musicians on any traveling, location or out-of-town engagement shall employ only such members as are in good standing in all of the Locals to which each one belongs and carry their union cards paid up to date."

4. By adding as Paragraph XIII a new Paragraph as follows:

That the leader and members of each of the orchestras mentioned herein were at all times material hereto members in good standing of the American Federation of Musicians.

5. By striking from the prayer of such Complaint the figures "26.98" and inserting in lieu thereof the figures "20.98".

THOMAS B. ROBERTS,
CLYDE B. CHARLTON,
Attorneys for Plaintiffs,
4th Floor, Empire Building,
Des Moines, Iowa.

[fol. 20] (Answer of Defendant United States of America in Case No. 294 Civil Action.)

Filed in U. S. District Court March 31, 1944.

The defendant, Maurice F. Donegan, United States Attorney, answers the complaint, as amended, in this action as follows:

1. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

2. Admits the allegations contained in paragraphs II and III of the complaint.

3. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs IV, V, VI and VII of the complaint.

4. Admits the allegations of paragraph VIII as amended.

5. Denies the allegations contained in paragraph IX of the complaint as amended.

6. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph X of the complaint except that defendant admits that Griff Williams and members of his orchestra were not employees of the plaintiffs on October 13, 1940.

7. Denies the allegations contained in paragraphs XI and XII of the complaint, as amended.

8. Denies the allegations contained in paragraph 13 of the amended complaint.

Wherefore the defendant asks judgment dismissing the complaint together with costs and disbursements of this action.

MAURICE F. DONEGAN,
United States Attorney.

CLOID I. LEVEL,
Assistant U. S. Attorney.

[fol. 21] (Motion of Griff Williams for Leave to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court May 17, 1944.

Griff Williams moves for leave to intervene as a party defendant in this action in order to assert the matters set forth in his proposed answer, of which a copy is hereto attached, on the grounds that he is the same Griff Williams mentioned in the complaint in this action; that he has a substantial interest in the subject matter of the action; that the representation of his interest by the original defendant is or may be inadequate; that he will be affected by a judgment in the action; that should the plaintiff recover in this action he would become liable to the United States Government in the amount plaintiff seeks to recover in this action, as either he or plaintiff is liable to the United States Government in the amount the plaintiff seeks to recover in this action; that his interest in the main action has questions of law and fact in common and that his intervention will not to any extent delay or prejudice the adjudication of the rights of the original parties.

Respectfully submitted,

JOSEPH A. PADWAY,

ROBERT A. WILSON,
736 Bowen Building,
Washington, D. C.

CHAUNCEY A. WEAVER,
325 Insurance Exchange,
Des Moines 9, Iowa.

Attorneys for Intervenor.

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[fol. 22] (Order granting leave to Griff Williams to Intervene in Case No. 294 Civil Action.)

Entered in U. S. District Court June 29, 1944.

On Motion of Griff Williams, It is Ordered that he be permitted to intervene in the above entitled action.

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[fol. 23] (Answer of Intervenor Griff Williams in Case No. 294 Civil Action:)

Filed in U. S. District Court September 21, 1944.

The defendant, Griff Williams, through his attorneys answers the complaint as amended in this action as follows:

1. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

2. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II of the complaint.

3. Admits the allegations contained in paragraph III of the complaint.

4. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV of the comp' int.

5. Admits the allegations of paragraph V of the complaint.

6. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs VI and VII of the complaint.

7. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII as amended.

8. Denies the allegations contained in paragraph IX of the complaint as amended.

9. States in answer to the allegations contained in paragraph X that members of this orchestra were not employees of the plaintiff on the occasion of the orchestra engagement of October 13, 1940 for the plaintiff.

10. Denies the allegations contained in paragraph XI of the complaint as amended.

11. Denies the allegations contained in paragraph XII of the complaint as amended.

12. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations [fol. 24] contained in paragraph XIII of the amendment to the complaint, except that he further states that he and all members of the orchestra known as Griff Williams and his Orchestra were members in good standing of the American Federation of Musicians at all times material hereto.

Wherefore, the defendant asks judgment dismissing the complaint, together with costs and disbursements of this action.

CHAUNCEY A. WEAVER,
325 Insurance Exchange,
Des Moines 9, Iowa.

JOSEPH A. PADWAY,

ROBERT A. WILSON,
736 Bowen Building,
Washington, D. C.

Attorneys for Intervenor.

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[fol. 25] (Motion of Bill Carlsen for Leave to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 12, 1944.

Bill Carlsen moves for leave to intervene as a party defendant in this action in order to assert the matters set forth in his proposed answer, of which a copy is hereto attached, on the grounds that he is the same Bill Carlsen mentioned in the complaint in this action; that he has a substantial interest in the subject matter of the action; that the representation of his interest by the original defendant is or may be inadequate; that he will be affected by a judgment in the action; that should the plaintiff recover in this action he would become liable to the United States Government for a portion of the amount plaintiff seeks to recover in this action, as either he or plaintiff is liable to the United States Government in the amount the plaintiff seeks to recover in this action; that his interest in the main action has questions of law and fact in common and that his intervention will not to any extent delay

or prejudice the adjudication of the rights of the original parties.

Respectfully submitted,

CHAUNCEY A. WEAVER,
325 Insurance Exchange,
Des Moines 9, Iowa.

JOSEPH A. PADWAY,

ROBERT A. WILSON,
736 Bowen Building,
Washington, D. C.

Attorneys for Intervenor.

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[fol. 26] (Order granting leave to Bill Carlsen to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

Upon consideration of the motion of Bill Carlsen to intervene herein as a party defendant and the Court having considered said motion and the answer rendered therewith and it appearing to the Court that the said Bill Carlsen should be permitted to intervene as prayed and the Court being duly advised in the premises;

It Is Ordered, that Bill Carlsen has leave to intervene in this cause and is hereby made a party to this cause and to that end may file instanter an answer in this cause in the same manner and with like effect as if named an original party to this cause.

By the Court

CHAS. A. DEWEY,
Justice.

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[fol. 27] (Answer of Intervener Bill Carlsen in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

The defendant, Bill Carlsen, through his attorneys answers the complaint as amended in this action as follows:

1. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

2. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II of the complaint.

3. Admits the allegations contained in paragraph III of the complaint.

4. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV of the complaint.

5. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of the complaint.

[fol. 28] 6. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs VI and VII of the complaint.

7. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII as amended.

8. Denies the allegations contained in paragraph IX of the complaint as amended.

9. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs X and XI of the complaint.

10. Denies the allegations contained in paragraph XII of the complaint as amended.

11. States that he has no knowledge or informtion sufficient to form a belief as to the truth of the allegations contained in paragraph XIII of the amendment to the complaint, except that he further states that he and all members of the orchestra known as Bill Carlsen and his orchestra were members in good standing of the American Federation of Musicians at all times material hereto.

Wherefore, the defendant asks judgment dismissing the complaint, together with costs and disbursements of this action.

CHAUNCEY A. WEAVER,
325 Insurance Exchange,
Des Moines 9, Iowa.

JOSEPH A. PADWAY,

ROBERT A. WILSON,
736 Bowen Building,
Washington, D. C.

Attorneys for Intervenor.

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[fol. 29] (Motion of Tiny Hill for Leave to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 12, 1944.

Tiny Hill moves for leave to intervene as a party defendant in this action in order to assert the matters set forth in his proposed answer, of which a copy is hereto attached, on the grounds that he is the same Tiny Hill mentioned in the complaint in this action; that he has a substantial interest in the subject matter of the action; that the representation of his interest by the original defendant is or may be inadequate; that he will be affected by a judgment in the action; that should the plaintiff recover in this action he would become liable to the United States Government for a portion of the amount plaintiff seeks to recover in this action, as either he or plaintiff is liable to the United States Government in the amount the plaintiff seeks to recover in this action; that his interest in the main action has questions of law and fact in common and that his intervention will not to any extent delay or prejudice the adjudication of the rights of the original parties.

Respectfully submitted,

CHAUNCEY A. WEAVER
325 Insurance Exchange
Des Moines 9, Iowa.

JOSEPH A. PADWAY

ROBERT A. WILSON
736 Bowen Building
Washington, D. C.

Attorneys for Intervenor.

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[fol. 30] (Order granting Leave to Tiny Hill to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

Upon consideration of the motion of Tiny Hill to intervene herein as a party defendant and the Court having considered said motion and the answer rendered therewith and it appearing to the Court that the said Tiny Hill should be permitted to intervene as prayed and the Court being duly advised in the premises;

It Is Ordered, that Tiny Hill has leave to intervene in this cause and is hereby made a party to this cause and to that end may file instanter an answer in this cause in the same manner and with like effect as if named an original party to this cause.

By the Court

CHAS. A. DEWEY

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[fol. 31] (Answer of Intervener Tiny Hill in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

The defendant, Tiny Hill, through his attorneys answers the complaint as amended in this action as follows:

1. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

2. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II of the complaint.

3. Admits the allegations contained in paragraph III of the complaint.

4. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV of the complaint.

5. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of the complaint.

[fol. 32] 6. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs VI and VII of the complaint.

7. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII as amended.

8. Denies the allegations contained in paragraph IX of the complaint as amended.

9. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs X and XI of the complaint.

10. Denies the allegations contained in paragraph XII of the complaint as amended.

11. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIII of the amendment to the complaint, except that he further states that he and all members of the orchestra known as Tiny Hill and his orchestra were members in good standing of the American Federation of Musicians at all times material hereto.

Wherefore, the defendant asks judgment dismissing the complaint, together with costs and disbursements of this action.

CHAUNCEY A. WEAVER
325 Insurance Exchange
Des Moines 9, Iowa

JOSEPH A. PADWAY

ROBERT A. WILSON
736 Bowen Building
Washington, D. C.

Attorneys for Intervenor.

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[fol. 33] (Motion of Boyd Raeburn for Leave to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 12, 1944.

Boyd Raeburn moves for leave to intervene as a party defendant in this action in order to assert the matters set

forth in his proposed answer, of which a copy is hereto attached, on the grounds that he is the same Boyd Raeburn mentioned in the complaint in this Action; that he has a substantial interest in the subject matter of the action; that the representation of his interest by the original defendant is or may be inadequate; that he will be affected by a judgment in the action; that should the plaintiff recover in this action he would become liable to the United States Government for a portion of the amount plaintiff seeks to recover in this action, as either he or plaintiff is liable to the United States Government in the amount the plaintiff seeks to recover in this action; that his interest in the main action has questions of law and fact in common and that his intervention will not to any extent delay or prejudice the adjudication of the rights of the original parties.

Respectfully submitted,

CHAUNCEY A. WEAVER
325 Insurance Exchange
Des Moines 9, Iowa

JOSEPH A. PADWAY

ROBERT A. WILSON
736 Bowen Building
Washington, D. C.

Attorneys for Intervenor.

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[fol. 34] (Order granting leave to Boyd Raeburn to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

Upon consideration of the motion of Boyd Raeburn to intervene herein as a party defendant and the Court having considered said motion and the answer rendered therewith and it appearing to the Court that the said Boyd Raeburn should be permitted to intervene as prayed and the Court being duly advised in the [presmies];

It Is Ordered, that Boyd Raeburn has leave to intervene in this cause and is hereby made a party to this cause and to that end may file instanter an answer in this cause in the

same manner and with like effect as if named an original party to this cause.

By the Court

CHAS. A. DEWEY,
Justice.

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[fol. 35] (Answer of Intervener Boyd Raeburn in Case No. 294 Civil Action.)

Filed in U. S. District Court, September 21, 1944.

The defendant, Boyd Raeburn, through his attorneys answers the complaint as amended in this action as follows:

1. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

2. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II of the complaint.

3. Admits the allegations contained in paragraph III of the complaint.

4. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV of the complaint.

5. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of the complaint.

[fol. 36] 6. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs VI and VII of the complaint.

7. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII as amended.

8. Denies the allegations contained in Paragraph IX of the complaint as amended.

9. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs X and XI of the complaint.

10. Denies the allegations contained in paragraph XII of the complaint as amended.

11. States that he has no knowledge or inforamtion sufficient to form a belief as to the truth of the allegations contained in paragraph XIII of the amendment to the complaint, except that he further states that he and all members of the orchestra known as Boyd Raeburn and his orchestra were members in good standing of the American Federation of Musicians at all times material hereto.

Wherefore, the defendant asks judgment dismissing the complaint, together with costs and disbursements of this action.

CHAUNCEY A. WEAVER
325 Insurance Exchange
Des Moines 9, Iowa

JOSEPH A. PADWAY

ROBERT A. WILSON
736 Bowen Building
Washington, D. C.

Attorneys for Intervenor.

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[fol. 37] (Motion of Buddy Fisher for Leave to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 12, 1944.

Buddy Fisher moves for leave to intervene as a party defendant in this action in order to assert the matters set forth in his proposed answer, of which a copy is hereto attached, on the grounds that he is the same Buddy Fisher mentioned in the complaint in this action; that he has a substantial interest in the subject matter of the action; that the representation of his interest by the original defendant is or may be inadequate; that he will be affected by a judgment in the action; that should the plaintiff recover in this action he would become liable to the United States Government for a portion of the amount plaintiff seeks to recover in this action, as either he or plaintiff is liable to the United States Government in the amount the plaintiff seeks to recover in this action; that his interest in the main action has questions of law and fact in

common and that his intervention will not to any extent delay or prejudice the adjudication of the rights of the original parties.

Respectfully submitted,

CHAUNCEY A. WEAVER,
325 Insurance Exchange
Des Moines 9, Iowa.

JOSEPH A. PADWAY,

ROBERT A. WILSON,
736 Bowen Building,
Washington, D. C.

Attorneys for Intervenor.

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[fol. 38] (Order granting leave to Buddy Fisher to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

Upon consideration of the motion of Buddy Fisher to intervene herein as a party defendant and the Court having considered said motion and the answer rendered therewith and it appearing to the Court that the said Buddy Fisher should be permitted to intervene as prayed and the Court being duly advised in the premises;

It Is Ordered, that Buddy Fisher has leave to intervene in this cause and is hereby made a party to this cause and to that end may file instanter an answer in this cause in the same manner and with like effect as if named an original party to this cause.

By the Court.

CHAS. A. DEWEY,
Justice.

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[fol. 39] (Answer of Intervener Buddy Fisher in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

The defendant, Buddy Fisher, through his attorneys answers the complaint as amended in this action as follows:

1. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

2. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II of the complaint.

3. Admits the allegations contained in paragraph III of the complaint.

4. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV of the complaint.

5. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of the complaint.

[fol. 40] 6. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs VI and VII of the complaint.

7. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII as amended.

8. Denies the allegations contained in paragraph IX of the complaint as amended.

9. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs X and XI of the complaint.

10. Denies the allegations contained in paragraph XII of the complaint as amended.

11. States that he [as] no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIII of the amendment to the complaint, except that he further states that he and all members of the orchestra known as Buddy Fisher and his orchestra were members in good standing of the American Federation of Musicians at all times material hereto.

Wherefore, the defendant asks judgment dismissing the complaint, together with costs and disbursements of this action.

CHAUNCEY A. WEAVER,
325 Insurance Exchange,
Des Moines 9, Iowa.

JOSEPH A. PADWAY,

ROBERT A. WILSON,
736 Bowen Building,
Washington, D. C.

Attorneys for Intervenor.

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[fol. 41] (Motion of Paul Moorhead for Leave to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 12, 1944.

Paul Moorhead moves for leave to intervene as a party defendant in this action in order to assert the matters set forth in his proposed answer, of which a copy is hereto attached, on the grounds that he is the same Paul Moorhead mentioned in the complaint in this action; that he has a substantial interest in the subject matter of the action; that the representation of his interest by the original defendant is or may be inadequate; that he will be affected by a judgment in the action; that should the plaintiff recover in this action he would become liable to the United States Government for a portion of the amount plaintiff seeks to recover in this action, as either he or plaintiff is liable to the United States Government in the amount the plaintiff seeks to recover in this action; that his interest in the main action has questions of law and fact in common and that his intervention will not to any extent delay

or prejudice the adjudication of the rights of the original parties.

Respectfully submitted,

CHAUNCEY A. WEAVER,
325 Insurance Exchange,
Des Moines 9, Iowa.

JOSEPH A. PADWAY,

ROBERT A. WILSON,
736 Bowen Building,
Washington, D. C.

Attorneys for Intervenor.

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[fol. 42] (Order granting Leave to Paul Moorhead to Intervene in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

Upon consideration of the motion of Paul Moorhead to intervene herein as a party defendant and the Court having considered said motion and the answer rendered therewith and it appearing to the Court that the said Paul Moorhead should be permitted to intervene as prayed and the Court being duly advised in the premises;

It Is Ordered, that Paul Moorhead has leave to intervene in this cause and is hereby made a party to this cause and to that end may file instanter an answer in this cause in the same manner and with like effect as if named an original party to this cause.

By the Court.

CHAS. A. DEWEY,
Justice.

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[fol. 43] (Answer of Intervener Paul Moorhead in Case No. 294 Civil Action.)

Filed in U. S. District Court September 21, 1944.

The defendant, Paul Moorhead, through his attorneys answers the complaint as amended in this action as follows:

1. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

2. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph II of the complaint.

3. Admits the allegations contained in paragraph III of the complaint.

4. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IV of the complaint.

5. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of the complaint.

[fol. 44] 6. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs VI and VII of the complaint.

7. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph VIII as amended.

8. Denies the allegations contained in paragraph IX of the complaint as amended.

9. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs X and XI of the complaint.

10. Denies the allegations contained in paragraph XII of the complaint as amended.

11. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XIII of the amendment to the complaint, except that he further states that he and all members of the orchestra known as Paul Moorhead and his orchestra were members in good standing of the American Federation of Musicians at all times material hereto.

Wherefore, the defendant asks judgment dismissing the complaint, together with costs and disbursements of this action.

CHAUNCEY A. WEAVER,
325 Insurance Exchange,
Des Moines 9, Iowa.

JOSEPH A. PADWAY,

ROBERT A. WILSON,
736 Bowen Building,
Washington, D. C.

Attorneys for Intervenor.

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[fol. 45] Be It Remembered, That on the 20th day of July, A. D. 1944, there was filed in the District Court of the United States for the Southern District of Iowa, Central Division, a Complaint in the case of Larry V. Geer and Margaret Geer, d/b/a Larry Geer Ballrooms, Plaintiffs, vs. E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa, Defendant, which case was numbered 328 Civil Action, Central Division, said complaint being in words and figures as follows:

[fol. 46] Complaint.

In the District Court of the United States in and for the Southern District of Iowa, Central Division.

Larry V. Geer and Margaret Geer, d/b/a Larry Geer Ballrooms, Plaintiffs,
No. 328. vs. Civil Action.
E. H. Birmingham, Individually and as Collector of Internal Revenue for the State of Iowa, Defendant.

Plaintiffs for their cause of action allege:

I.

Plaintiffs are residents and citizens of Iowa, engaged in business in the City of Fort Dodge, Iowa, as a partnership doing business under the name of the Larry Geer Ballrooms.

II.

At all times mentioned herein the Defendant was and still is the duly appointed, qualified and acting Collector of Internal Revenue of the United States of America for the District of Iowa.

III.

This action arises under the acts of Congress known as the Federal Insurance Contributions Act, approved February 10, 1939, as Subchapter A of Chapter 9 of the Internal Revenue Code (53 Stat. 175), and the Federal Unemployment Tax Act, approved February 10, 1939, as Subchapter C of Chapter 9 of the Internal Revenue Code, (53 Stat. 193).

[fol. 47] IV.

That during the years 1941 and 1942, the Plaintiffs operated ballrooms in Fort Dodge, Storm Lake and North of Rockwell City, Iowa, wherein were held dances for the entertainment and amusement of the public, for which an admission charge was made; that music for such dances was furnished by traveling orchestras which were permanent organizations engaged in the business of furnishing music for dance engagements for ballroom operators, fraternal and social clubs, charitable organizations, lodges, American Legion Posts, police and fire departments and college and high school classes, most of such engagements being for one evening's duration.

V.

That among such traveling orchestras which furnished dance music for engagements at Plaintiffs' ballrooms were certain orchestras whose names and dates of engagements are as follows:

| Name | Dates of Engagements |
|---|---|
| Al Menke and His Orchestra | October 12 and 18, 1941, November 8 and 26, 1941, and November 26, 1942. |

| | |
|---|---|
| Les Hartman and His Orchestra | February 5, March 5, April 2, May 7, June 4, July 2, August 6, September 3 and October 1, all in 1942. |
| Jimmy Barnett and His Orchestra | January 1, 5, and 24, April 25, June 16, July 2, 3, and 4, August 1 and 8, September 12, October 4, November 7, 14, 15 and 17, December 5, 6 and 22, all in 1942. |
| Paul Moorhead and His Orchestra | February 17 and 22, March 21 and 22, April 18, May 2, 9, 16, 28 and 31, June 2 and 30, July 11, 12, 14 and 16, October 10, 11, 12 and 24, all in 1942. |
| Blue Barron and His Orchestra | August 26, 1941, and July 4, 5 and 9, 1942. |

[fol. 48]

| | |
|---|---|
| Doc Lawson and His Orchestra | July 4, 1942. |

That each of the foregoing engagements, except those by Al Menke and His Orchestra, Less Hartman and His Orchestra and Doc Lawson and His Orchestra were booked for the orchestra performing the same by a booking agent which the leader of such orchestra has made his exclusive representative for the purpose of booking engagements for his said orchestra, for which services such agent was paid a commission by said leader; that in order to secure each of the orchestras hereinabove mentioned for each of its said engagements, Plaintiffs were required to excute a printed form of contract identical to that contained in the contract of which Exhibit "A" attached hereto is a copy.

VI.

That in the year 1943, an agent of the Defendant's office examined the books and records of Plaintiffs and there-

after prepared, on Plaintiffs' behalf, amended returns reporting payments made for the services of the orchestras named in the preceding paragraph and also certain other orchestras which had performed engagements at Plaintiffs' ballrooms during the years 1941 and 1942; that Plaintiffs signed said amended returns under protest, stating to said agent that all of the payments to the orchestras listed therein were made to the leaders thereof as independent contractors and not to such leaders and the sidemen of their respective orchestras as employees of Plaintiffs; that said returns were then filed by said agent with the Defendant.

VII.

That Defendant thereafter, upon the amended returns so filed by his agent, assessed Plaintiffs additional taxes and interest under said Federal Insurance Contributions [fol. 49] Act in the aggregate sum of $378.13, and additional taxes and interest under said Federal Unemployment Tax Act in the aggregate sum of $516.75, and on or about July 24, 1943, served upon Plaintiffs notice and demand for the payment of said taxes; that Plaintiffs, in order to avoid penalties and distraint of their property, paid to Defendant on or about August 4, 1943, the two sums aforementioned. That the employee's tax in said payment of $378.13 Federal Insurance Contributions Tax and interest was not withheld by Plaintiffs from any sums paid said orchestras, but was paid by Plaintiffs from their own personal funds.

VIII.

That on or about October 24, 1943, Plaintiffs filed with the Collector of Internal Revenue at Des Moines, Iowa, on Form 843, claims for refund of both amounts of said taxes paid Defendant as set forth in the preceding paragraph of this complaint; that in a letter dated February 7, 1944, the then Acting Commissioner of Internal Revenue notified the Plaintiffs that said claims for refund were thereby disallowed.

IX.

That Plaintiffs are enttled to have refunded to them that part of said taxes paid with respect to sums paid for the services of the orchestras listed in Paragraph V of this complaint for the reason that Plaintiffs were not the em-

ployers of the leader and members of any of such orchestras within the meaning of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act on the occasion of its engagements for Plaintiffs at one of their ballrooms and, hence, no taxes thereunder were due from the Plaintiffs with respect to the sum of money which they paid for the services of said orchestra in performing said engagement; that the leader of each of such orchestras [fol. 50] was an independent contractor and he, and not Plaintiffs, was the employer of the members of any orchestra for the purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, and solely responsible for the taxes imposed by each of those enactments with respect to the sums of money received by the members of his orchestra for their services in performing each of its engagements at one of Plaintiffs' ballrooms; that the amount of Federal Insurance Contributions paid by Plaintiffs on sums paid for the services of said orchestras was $160.44, and the amount of Federal Unemployment Tax paid for such service was $240.64.

X.

That the leader of each of the orchestras mentioned in Paragraph V of this complaint, on the occasion of each of its engagements at one of Plaintiffs' ballrooms, was an independent contractor and the employer of the members of his orchestra for the reasons that he was engaged in an independent business for profit, and he alone, and not Plaintiffs,

(1) Hired and discharged the members of his orchestra and determined the cause therefor.

(2) Had the right to control the details and manner of the performances of the orchestra members and exercised such control in that he:

(a) dictated the style of music, length and tempo, volume, selections and time for feature performances.

(b) determined the instrumentation.

(c) determined the attire of the members.

(d) either provided or arranged for the transportation of the members to and from said engagement.

(e) told the members where and when to report for the [fol. 51] performance of the engagement.

(f) determined the time and place of rehearsals and numbers to be rehearsed, and at such rehearsals directed the members in their efforts to produce the type of music which he desired the orchestra to play.

(g) determined placing of musicians on the bandstand.

(h) selected and compiled the music library from which the dance pieces were played.

(i) saw to it that the orchestra, in the rendition of its services, carried out his ideas of showmanship and the type and style of music to be played.

(3) Determined the time, place and amount of payment of the compensation of such members and was liable to the members of his orchestra for such compensation, irrespective of whether he received the contract price for said engagement.

That Plaintiffs, in executing the contracts for each of said orchestras, were not concerned with and did not know, the names of the members of such orchestras or the amounts of compensation received by them; that Plaintiffs were familiar with the reputation and special quality of music of said orchestras and relied on the leader of each to furnish an organization composed of musicians selected, rehearsed and capable of performing such quality of music.

XI.

That although each of said contracts purports to create the relationship of employer and employee between Plain- [fol. 52] tiffs and the orchestra leader and the members of the orchestra named therein, it did not and could not have that effect for the following reasons:

(1) Plaintiffs and said orchestra leader and the members of his orchestra could not change their true relation, as shown by the actual facts, through mere nomenclature and artful language in a written contract, particularly where such contract represents a skillful, painstaking and ingenious attempt to avoid liability for taxes imposed by legislative enactment; that the form of contract of which Exhibit "A" attached hereto is a copy is such a contract,

having been prepared by the American Federation of Musicians for the express purpose of endeavoring to shift the responsibility for the payment of Social Security and employment taxes from the leaders or owners of the orchestras, as the actual employers of its members, to the person engaging such orchestra's services; that such purpose is shown not only by the terms of the contract itself, but also by the contents of a notice given to all locals of the American Federation of Musicians on May 1, 1941, and signed by James C. Petrillo and Fred W. Birnbach, President and Secretary respectively of such Federation, a copy of which notice is attached hereto marked Exhibit "B" and by this reference made a part hereof.

(2) Under Section 29 of Article X of the By-laws of the American Federation of Musicians in effect during the year 1941 and at all times since 1941, which by-laws are made a part of said contract by an express provision therein, the sidemen in said leader's orchestra, as members of such Federation, were prohibited under penalty of expulsion from said Union from accepting engagements with Plaintiffs and hence no relationship of employer and employee could exist between Plaintiffs and said sidemen. A true copy of Section 29 of Article X of said By-laws is attached hereto, marked Exhibit "C" and by this reference [fol. 53] made a part hereof.

(3) The members of the orchestra are not described in said contract with sufficient certainty to make them parties thereto.

(4) The provision in said contract purporting to vest control of the orchestras' services in Plaintiffs is so indefinite that unless it be considered as referring to control over results to be accomplished under the contract, the provision is utterly meaningless and of no effect whatever.

(5) That in the case of each said contract negotiated by a booking agency, said contract was used by such agency, the orchestra leader named therein and Plaintiffs for the purpose of remaining in good standing with the American Federation of Musicians, and not for the purpose of reflecting actual facts pertaining to the engagement.

(6) That said contract was not executed by the sidemen of the orchestra named therein or any agent authorized by such sidemen to execute the same for them; that none of said sidemen ever authorized anyone, either orally or by power of attorney as required by Section 48 of Article X of the By-laws of the American Federation of Musicians, to accept such contract for them, which By-law made a part of said contract by an express provision therein recites:

"Members of the American Federation of Musicians who accept engagements for bands or orchestras must in person sign their contracts for same or give some agent power of attorney to sign their names."

XII.

That Al Menke, Jimmy Barnett and Blue Barron were each an independent contractor and the employer of the members of their respective orchestras on the occasion of each of said orchestra's engagements at Plaintiffs' ballrooms for the further reason that each said leader assumed [fol. 54] the responsibility for the payment of all taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act with respect to the sums paid the members of his orchestra for their services in performing such engagements, and each said leader actually paid to a Collector of Internal Revenue the amount of such taxes.

Wherefore, Plaintiffs demand judgment against the Defendant in the sum of $401.18, together with interest at the rate of 6% per annum from and after the 4th day of August, 1943, and the costs and such other relief as the court may decree.

THOMAS B. ROBERTS
CLYDE B. CHARLTON
Attorneys for Plaintiffs,
4th Floor, Empire Building
Des Moines, Iowa

[fol. 55] Exhibit "A"

Contract Blank

American Federation Of Musicians

Local No. 477

This Contract for the personal services of musicians, made this 23rd day of November, 1942 between the undersigned employer (hereinafter called the employer) and 13 musicians (hereinafter called employees) representd by (including Leader)
the undersigned representative.

Witnesseth, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of Al Menke, according to the following terms and conditions:

Name and Address of Place of Engagement Laramar Ballroom, Ft. Dodge, Iowa

Date(s) of Employment Thursday Nov. 26th, 1942

Hours of Employment 9 P M to.....

Price Agreed Upon $250.00
(Terms and Amount)

To be paid after engagement
(Specify When Payments Are to be Made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not

perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

[fol. 56] The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Larry Geer

Street Address.....

City or State Ft. Dodge Iowa

Phone.....

Accepted by Employer Larry Geer

Accepted Al Menke
(Orchestra Leader)

By /s/ Al Menke
(Representatives of Employees)

Form B

[fol. 57] Exhibit "B"

To All Locals of the
American Federation of Musicians:

Enclosed herewith you will find a sample copy of the new contract form adopted by the International Executive Board to cover all engagements excepting those played in theatres and radio stations and with grand opera companies and symphony orchestras.

This contract is the one which has been adopted by the International Executive Board for the purpose of protecting our members under the Social Security Laws and upon which favorable decisions have been received by our members from the Internal Revenue Department.

This contract and none other must be used on all such engagements on and after June 1, 1941. Any member or any officer who assists a member in preparing a contract on any other form will be in violation of the laws of the American Federation of Musicians and will be subject to charges for said violation. All engagements booked by licensed agencies must be contracted on these forms.

A supply of these contracts may be secured from the International Secretary's Office.

Kindly be governed accordingly.

Fraternally yours,

JAMES C. PETRILLO,
President, A. F. of M.

Attest:
FRED W. BIRNBACH,
Secretary, A. F. of M.

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[fol. 58] Exhibit "C"

Section 29 of Article X of By-laws of American Federation of Musicians of the United States and Canada:

"Members of the Federation are only permitted to accept, solicit or negotiate engagements to play in bands or orchestras from members who contract to furnish bands or orchestras, never from the employers or the

agents of such to whom the band or orchestra is furnished, provided that in states or provinces where laws exist, which prescribe a different method of contracting, or where the provisions of law are such that to contract as above prescribed would be contrary to the interests of members, Locals are authorized to establish such method of contracting as may best conserve the interest to members. However, members may accept engagements from traveling theatre company managements direct, provided their contract, in addition to the signatures of the contracting parties, is countersigned by the musical director of the company or the member of the Federation who engages the members for the company. Furthermore, members may contract with symphony orchestra management direct in conformity with all Local and Federation Laws.

"If a member violates the above, such action shall constitute his resignation from membership in such Locals where he held membership, and in the American Federation of Musicians."

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[fol. 59] (Answer of Defendant United States of America in Case No. 328 Civil Action.)

Filed in U. S. District Court August 29, 1944.

The defendant, by Maurice F. Donegan, United States Attorney, answers the complaint in this action as follows:

1. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

2. Admits the allegations contained in paragraphs II and III of the complaint.

3. States that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs IV and V of the complaint.

4. Admits the allegations contained in paragraph VI of the complaint.

5. Admits the allegations contained in paragraph VII of the complaint except the last sentence thereof, and as to that allegation, defendant states that he has no knowledge

or information sufficient to form a belief as to the truth thereof.

6. Admits the allegations contained in paragraph VIII of the complaint.

7. Denies the allegations contained in paragraphs IX, X, XI and XII of the complaint.

Wherefore defendant asks judgment dismissing the complaint together with costs of this action.

MAURICE F. DONEGAN,
United States Attorney.

CLOID I. LEVEL,
Assistant U. S. Attorney.

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[fol. 60] (Order of District Court consolidating Civil Actions Nos. 249 and 328 for purpose of Trial, etc.)

Entered in U. S. District Court November 28, 1944.

It is Ordered that the above entitled actions be and the same are consolidated for the purpose of trial.

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[fol. 62] (Transcript of Evidence and Proceedings in Civil Actions Nos. 294 and 328.)

Filed in U. S. District Court May 19, 1945.

In the United States District Court for the Southern District of Iowa, Central Division.

Roy E. Bartels, et al., d.b.a., Crystal Ballroom,
Plaintiffs,
No. 294 vs. Civ. Act.
E. H. Birmingham, Individually and as Collector of Internal Revenue, Defendant.

Bill Carlsen, Tiny Hill, Paul Moorhead, Griff Williams and Boyd Raeburn, Interveners,

and

Larry V. Geer and Margaret Geer, d.b.a., Larry Geer Ballrooms, Plaintiffs,
No. 328 vs. Civ. Act.
E. H. Birmingham, etc., Defendant.

Appearances:

Tom B. Roberts and Clyde B. Charlton, Attorneys for plaintiffs.

Maurice F. Donegan, District Attorney, C. I. Level, Assistant District Attorney, Harold D. Cohen, Special Assistant Attorney General, Attorneys for defendant.

Joseph A. Padway, Chauncey A. Weaver, Robert W. Wilson, Attorneys for Interveners.

Case called for trial upon its merits before Hon. Chas. A. Dewey, Judge, beginning at 11:00 a.m., December 11, 1944, both above cases being consolidated for trial.

Reported by

VERNON L. GRANT,
HARRY E. BEACH,
Official Shorthand Reporters.

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[fol. 66] Morning Session—Monday, December 11, 1944.
11:00 o'clock.

The Court: The cases will be ordered consolidated for trial. I notice you have a reporter here, and it appearing to the court that this is a case which should be stenographically reported, Vernon L. Grant and Harry E. Beach are hereby appointed official Reporters to take down the evidence of the witnesses in shorthand, under the local rules of this court. All right, you may proceed.

* * * * * * *

[fol. 97] Monday, December 11, 1944,
Afternoon Session, 2:00 p.m.

The Court: I guess we are all here. You may proceed.

Roy E. Bartels, plaintiff, called as a witness on his own behalf, and being first duly sworn by the Clerk, testified as follows:

Direct Examination.

By Mr. Roberts:

Q. Will you give your name to the reporter?

A. Roy E. Bartels.
Q. Where do you live, Mr. Bartels?
A. Dubuque, Iowa.
Q. You are one of the plaintiffs in this case?
A. Yes, sir.
Q. Are you and the other plaintiffs partners?
A. Yes, sir.
Q. What business is the partnership engaged in?
A. Operation of the Crystal Ballroom, dancing.
Q. Where is that? A. At Dubuque, Iowa.
Q. How long has the partnership been engaged in that business?
[fol. 98] A. Since 1934.
Q. Who manages the ballroom for the partnership?
A. I do.
Q. How long have you been such manager?
A. Since 1934.
Q. Do any of the other partners actively participate in the management of the ballroom?
A. I consult them, but I am the manager.
Q. Just tell what your duties were during the years 1940, '41 and '42.
A. One of the duties was to secure orchestras, take care of the duties generally of running the ballroom.
Q. You were the only one that did that for the partnership? A. Yes, sir.
Q. Just tell the court, you mentioned something about dances, how often were those dances held during those years?
A. They were held on an average of once a week; some times in the holidays they would be more. We have one exception, we do not operate in the advent of Lent.
Q. Who could attend these dances?
A. Any respectable citizen. It was a public dance, upon the payment of their fees, the admission.
Q. About how many patrons could you accommodate there? A. About 1250.
[fol. 99] Q. That would be a capacity crowd?
A. Yes, that would be.
Q. Now do these dances require some kind of music?
A. Yes.
Q. What kind? A. Dance music that would be.
Q. Who furnishes it?

A. Well, it is always bands. We never had the same band, that is, I mean we operate one night, one week we will have one orchestra and another week we have a different orchestra, different orchestras.

Q. Do you use what is commonly known as a house band? A. No, sir.

Q. Just tell the court what a house band is.

A. Well a House Band would be a band that would play night after night in rotation on the premises as the band of the establishment.

Q. What can you tell the court as to whether one of the orchestras just furnished music for dances at the Crystal Ballroom was Griff Williams and his orchestra?

A. Yes, it was.

Q. Can you recall when those engagements were?

A. Well, there was one we had, one September 1, 1941, and we had another engagement in the month of November, [fol. 100] 1940.

Mr. Roberts: If the court please, I will have to see the original contracts. They were made a part of the deposition of Griff Williams in Chicago.

Mr. Padway: We have no objection to your using the photostatic copies.

Mr. Roberts: I believe I can use these all right.

Q. I will hand you now, Mr. Bartels what has been marked exhibit, Plaintiffs' Exhibit A, attached to the deposition of Griff E. Williams, and ask you to examine that document and ask you if your signature appears any place thereon? A. Yes, it does.

Q. Just tell the court what that document is?

A. That is a contract with the Music Corporation of America and Griff Williams' Orchestra to appear at the Crystal Ballroom on October 13, 1940.

Mr. Cohen: Now if the court please, I want to object to this line of questioning and to move that the answer be stricken on the ground that any testimony of prior engagements other than the one in issue is not material or relevant to the issues in this case.

The Court: Oh, we always have to have a little background or scenery. I don't want to go too much out on a

limb, but I think this will be all right for background. Over-
[fol. 101] ruled. I appreciate your trying to hold it down. We want to do that if we can. (Defendant excepts).

Q. I call your attention to another document in the same deposition which has been marked exhibit, Plaintiffs' Exhibit B, and ask you to examine it and tell the court if your signature appears any place on that document?

A. Yes, it does.

Q. And what is that document?

A. That is another contract with the Music Corporation of America for the appearance of Griff Williams at the Crystal Ballroom, September 1, 1941.

Q. Now prior to the execution of the contract marked Exhibit B, did you have a conversation with anyone representing the Music Corporation of America?

A. Yes, I did.

Q. And who was that with?

A. That would be Jim Breyley.

Q. Is that the same Breyley that had to do with the execution of that contract Exhibit B?

A. Yes, that would be the same; yes.

Q. Just tell the court what was said by Mr. Breyley and what was said by you.

A. Well, Mr. Breyley had contacted me and told me he
[fol. 102] had a date which I could use, and he needed on Griff Williams' Orchestra, and we talked it over and he set a price, and I agreed to it, on the advance, I think I talked with Mr. Breyley on that.

Q. Incidentally just tell the court who the Music Corporation is?

A. They are booking agents for these various named orchestras.

Q. What conversation, if any, did you have with Williams prior to the time, or at the time of the signing of the contract Exhibit B? A. Well, I objected—

Q. No, I am speaking of Griff Williams. Did you have any contact with him? A. No.

Q. Did you have any contact with any of the sidemen?

A. No, sir.

Q. Of Griff Williams Orchestra? A. No.

Q. That is prior to or at the time of the signing of—

A. No, sir.

Q. — the contract. Now you mentioned something about an objection, did you have a conversation with somebody about that?

A. I had a conversation with Jim Breyley.

[fol. 103] Q. And just state what was said in that conversation?

A. I objected to the form of his contract.

Q. And did you say anything further?

A. Well, I told him I wouldn't sign this type of contract.

Q. What, if anything, did Mr. Breyley say?

A. So he said either I sign this contract or I didn't get this orchestra.

Q. Did he say anything further as to why you could not get the orchestra?

A. Well, this Union, when they had a call it came from the Musicians Union.

Q. Incidentally, the date of the contract is what?

A. The date of the contract as made is July 26, 1941.

Q. What can you tell the court, whether this is one of the first Form B contracts that you have seen?

A. That's right, that was one of the first contracts.

Q. You recognize that as a Form B contract?

A. That is right.

Q. In fact there is "Form B" printed on the bottom?

A. On the lower left-hand corner.

Q. Now what can you tell the court as to whether or not at any time during the negotiations leading up to the execution of the contract marked Exhibit B, either A or B, did you know as to the identify of the side men of Griff

[fol. 104] Williams Orchestra?

A. No, I never knew any of the side men.

Q. Did you, during the playing of their engagements, either engagements mentioned of this orchestra, learn the identity of any of the side men? A. No.

Q. Now prior to the execution of the contract marked Exhibit B, what can you tell the court as to whether you were familiar with the style of Griff Williams' music?

A. Yes, I was familiar with his style of music.

Q. How did you become familiar with it?

A. Well, through the publicity set out by his booking agents. He had appeared at the ballroom once before or twice, he also appeared at various other ballrooms around the immediate—within twenty to twenty-five miles, and his

programs over the air from these different big hotels in Chicago and establishments.

Q. What purpose did you have in securing Griff Williams and his orchestra for the second engagement?

A. Well, to render the music for the dance.

Q. In his particular style?

A. Yes, it would be his style of music.

Q. On whom, if anyone, did you rely to bring you an orchestra that would furnish that particular style?

[fol. 105] A. Griff Williams.

Q. Can you tell the court how many side men participated in that engagement of September 1, 1941?

A. Thirteen.

Q. What, if anything, did you have to do with determining the number? A. None.

Q. That is, you had nothing to do with the determining of the number? A. No, sir.

Mr. Padway: Well, I don't want to object to this, but I think the best evidence is the contract, it speaks for itself, and the parties designate the number and the court will conclude then who determines it and what it was determined on, the contract put it around thirteen men, that is in there, then the evidence, if it is in there, that is conclusive.

The Court: Overruled: (Interveners except).

Q. What, if anything, did you have to do, Mr. Bartels, with the arranging for the transportation of Griff Williams and his orchestra to Dubuque for either one of these engagements? A. Nothing. Nothing.

Q. Do you recall whether the members of Griff Wil-

[fol. 106] liams' Orchestra were in uniform on the occasion of either one of these engagements?

A. They were.

Q. Who provided those uniforms, do you know?

A. That I don't know.

Q. Did you have anything to do with that?

A. No, sir.

Q. Did you at any time or prior to—did you at any time prior to, or particularly each engagement, have any conversation with Williams with reference to the attire of his side men? A. No, sir.

Q. Did you have any conversation with any of his side men during each engagement or prior thereto with reference to their particular attire? A. No, sir.

Q. What can you tell the court as to whether or not you have any rule, house rule at the Crystal Ballroom as to how orchestras are to dress while appearing there?

A. We have no rule whatever.

Q. That is, you never have had? A. No.

Q. That is, you never have had? A. No.

[fol. 107] Q. Can you tell the court where Griff Williams sat during the engagement?

A. On the bandstand.

Q. That is, of course, in the ballroom? A. Yes, sir.

Q. What, if anything, did you observe as to the manner in which the musicians were seated on the band stand?

A. Oh, they were arranged according to their different sections in the band. Griff Williams and his band, I don't know, some of the members moved the piano down to the front of the stage where he was, right on the front of the patrons, the dancers.

Q. What, if anything, did you have to do with this seating arrangement, or the arrangement of the instruments? A. Nothing at all.

Q. Now I presume the members of the orchestra used something to produce music on the occasion of your engagement?

A. Well, they used their musical instruments.

Q. What if any of these instruments did you provide?

A. Nothing outside of the piano.

Q. And that is the piano that is mentioned that was moved down in front? A. Yes, sir.

Q. What, if anything, did you observe regarding Wil-

[fol. 108] liams use of the band during the performance of these engagements?

A. Well, Williams would—oh, what you call it—he would hit possibly two or three bars on his piano, on the piano, that would be what you call the kick-off, and then he would pick up his baton, or his stick, and he would slide gracefully across in front of the orchestra directing them.

Q. What, if anything, did you say to Williams prior to or during each engagement with reference to instrumentation of his orchestra? A. Nothing.

Q. What conversation did you ever have with any of his side men during their engagement with reference to his instrument or the manner of playing it?

A. Not anything.

Q. Never had any conversation with him respecting that matter? A. No, sir.

Q. Now, Mr. Bartels, just tell the court what oral instructions, if any, you ever gave Griff Williams on the occasion of each engagement of his orchestra regarding the style of music to be played?

A. Now there was nothing at all, no instruction.

[fol. 109] Q. Any instructions as to faster or slower pieces? A. No.

Q. Greater or less volume? A. No.

Q. Selections to be played? A. No.

Q. Did you ever give any oral instructions to the side men respecting any of those matters? A. No, sir.

Q. That is to the style of music or the tempo or the pieces to be played? A. No.

Q. No instructions on those? A. No.

Q. What can you tell the court as to whether Williams had some feature side men?

A. He may have had some side men there with him that sang.

Q. They would play a chorus part by themselves, is that right?

A. Well, they possibly would sing a chorus of some parts.

Q. Did you tell them when to do that? A. No.

Q. What written orders or instructions, if any, did you ever give Griff Williams on the occasion of either engage-

[fol. 110] ment of his orchestra with reference to such style of music, tempo, pieces to be played, greater or less volume? A. None.

Q. Who did you observe that gave directions to the orchestra respecting those matters? A. Griff Williams?

Q. That was true on both occasions? A. Yes, sir.

Q. Do you recall whether the orchestra in playing their engagements used a public address system?

A. Yes, they did.

Q. Was that yours? A. No, sir.

Q. Who supplied it, do you know?

A. The orchestra.

Q. What can you tell us as to whether or not the orchestra used any music racks during the playing of each engagement? A. Yes, they did.

Q. Did you provide those? A. No, sir.

Q. State who supplied them, if you know?

A. The orchestra supplied them.

Q. By the orchestra, who do you mean?

A. Griff Williams.

[fol. 111] Q. State whether or not you ever told Williams or any member of his orchestra while the orchestra was at the Crystal Ballroom, the route to use in reaching and leaving the band stand? A. No.

Q. Gave no instructions of that kind? A. No, sir.

Q. What can you tell the court as to whether it is customary for an orchestra during the playing of an engagement to take an intermission? A. It is.

Q. Is there anything in the By-Laws about that, of the Musicians Union?

A. I believe they are entitled to a twenty minutes intermission on every four hour job.

Q. And these were all four hour jobs?

A. All four hour jobs, yes.

Q. Do you recall any of them running over that time?

A. No.

Q. That was the time specified? A. That is right.

Q. And none of them played over that time?

A. No, sir.

Q. That is on neither occasion did either orchestra play [fol. 112] over the time in the contract? A. No, sir.

Q. What can you tell us as to whether Williams' Orchestra took an intermission during each engagement?

A. They did.

Q. Did you tell them when to take it?

A. No, I did not.

Q. What orders, if any, did you give Williams relative to the conduct of his side men during the intermission?

A. I gave him no orders.

Q. Did you have a special room at the ballroom where they could retire during the intermission? A. No, sir.

Q. No such special room? A. No.

Q. Did you give the side men themselves any orders as to their conduct during the intermission? A. No, sir.

Q. Now, what, if anything, was in the music racks during the playing of each engagement?

A. Why, there would be music.

Q. That is, some kind of sheet music?

A. Sheet music of some kind.

Q. Did you own a musical library? A. No, sir.

[fol. 113] Q. Are you a musician yourself?

A. No, sir.

Q. Can you prepare a musical arrangement?

A. No, sir.

Q. Do you know who furnished the music that appeared on the rack? A. Griff Williams.

Q. You had nothing to do with it?

A. No, sir.

Q. Now you mentioned something as to what—withdraw that. What instruction, if any, did you give Griff Williams or the members of his orchestra on each occasion when they were at the Crystal Ballroom with reference to rehearsals?

A. I gave them no instruction on rehearsals.

Q. No conversation at all on that?

A. No, sir. No, sir.

Q. Now you have mentioned something about seeing Griff Williams in front of the orchestra and what he did. What can you tell us as to who told the orchestra when to begin and when to stop?

A. The contract says—

Q. No, I mean in the actual playing.

A. Well, I had nothing to do with that at all.

[fol. 114] Q. Who did?

A. Griff Williams would start his orchestra and stop it.

Q. You saw him do that? A. Well—

Q. You observed him doing that? A. Well, sure.

Q. What can you tell the court as to whether Griff Williams came to you prior to the playing of each engagement and ask you what pieces you wanted him to play during the dance?

A. No, he never came to me.

Q. Did you at any time on the occasion of either engagement, state to him "Mix them up, Griff"?

A. No.

Q. Now with reference to these various matters that we have inquired into concerning which you testified, you gave

no instruction or direction, can you tell the court why that was that you gave no instructions?

A. Well, I myself never got inside of the ballroom until after ten o'clock in the evening, any night, because we are approximately, oh, one mile from bus service, and we provided our own bus service to the ballroom, which I personally oversaw in the early hours, and therefore we gave that service from eight to ten o'clock in the evening, and I am [fol. 115] never inside of the ballroom until after that. I may go out in the afternoon around four, and just look the place over and then around 7:30 I go on the other work.

Q. What, if anything, did you believe as to your right to give instructions?

Mr. Padway: Now that is objected to as incompetent, irrelevant and immaterial, as calling for the construction of a contract, a conclusion of law. I beg Your Honor's pardon. Do you arise when you make objections and address the court? I came from Milwaukee—

The Court: Well, we all have different rules.

Mr. Padway: I want to be—

The Court: My rule is just the opposite. We don't require the attorneys to rise, don't permit them to rise unless to approach the witness with an exhibit, and I would prefer that you sit for the examination of the witness, and then when you address the court we make you stand up.

Mr. Padway: I was pretty near thrown out for not rising up before a Justice, and it is a habit for me to remain sitting.

The Court: It is a little different when you address the court, we would rather you would arise.

[fol. 116] Mr. Padway: I mean on objections.

The Court: Remain sitting, yes.

Mr. Padway: I make the objection that—

The Court: I think you are sustained on that.

(Interveners except)

(Question read by the reporter.)

The Court: I cannot see how that would help. I am sustaining that as immaterial, not because of any other reason. (Plaintiffs except.)

Q. I hand you now what the reporter has marked Exhibit Q, and ask you to examine it and tell the court if your signature appears any place on the document?

A. Yes, sir.

Q. Just tell the court what that document is?

A. That is a check for a deposit on the Griff Williams' engagements, October 13, 1940.

Q. To whom is the check payable and in what amount?

A. Amount of $150, to the Music Corporation of America.

Q. I will hand you what the reporter has marked Exhibit R, and ask you to examine that exhibit and tell the court whether your name appears any place thereon?

A. It does.

Q. Just tell the court what that document is, if you know.

A. That is a check and deposit for the engagement of [fol. 117] Griff Williams on September 1, 1941.

Q. And the amount and to whom paid?

A. The amount is $125 and it was to the Music Corporation of America.

Q. State to whom the balance of the purchase price was paid to in the case of each engagement?

A. Griff Williams.

Q. And can you tell the court what those amounts were?

A. The—What was the total amount for each engagement? The total amount of the first contract was to be $300. He was paid, that is, October 13, 1940, he was paid $150 in cash. And the amount of the second contract was $350 and he would be paid $225 in cash.

Mr. Roberts: Plaintiff offers in evidence plaintiff's Exhibit Q.

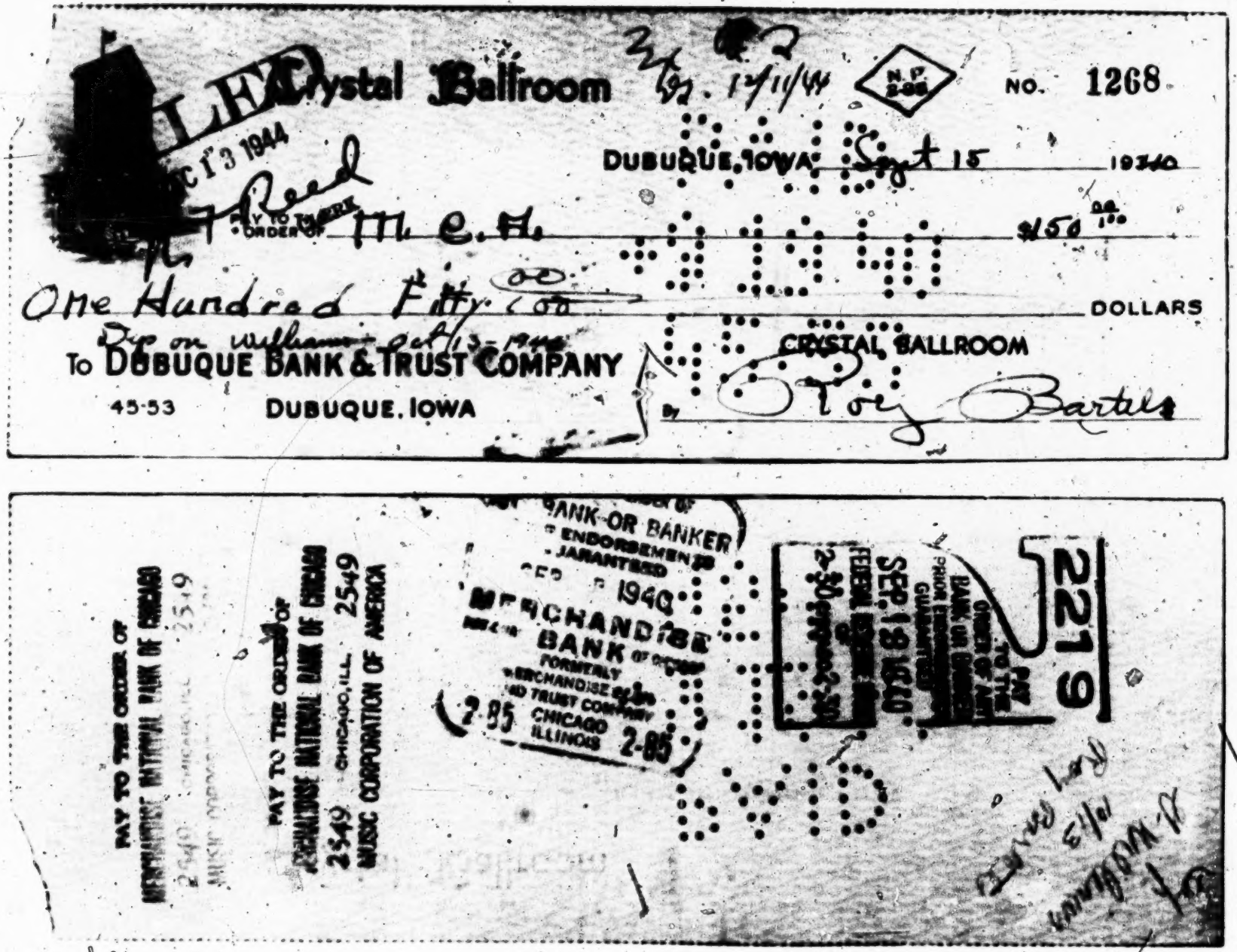
Mr. Padway: No objection.

Mr. Cohen: No objection.

Mr. Roberts: Plaintiffs offer in evidence Exhibit R.

The Court: If there is no objection they may be admitted.

Plaintiffs' Exhibit Q.
Filed in U. S. District Court December 13, 1944.



Crystal Ballroom 12/11/44 NO. 1268

DUBUQUE, IOWA Sept 15 1940

PAY TO THE ORDER OF M. C. H. $150 00/100

One Hundred Fifty 00 DOLLARS

Dep on William Reed 13-1940

To DUBUQUE BANK & TRUST COMPANY

45-53 DUBUQUE, IOWA

CRYSTAL BALLROOM

By Tony Bartals

DEC 13 1944

Reed

PAY TO THE ORDER OF

INTERNATIONAL BANK OF CHICAGO 2549

PAY TO THE ORDER OF

INTERNATIONAL BANK OF CHICAGO 2549

MUSIC CORPORATION OF AMERICA

BANK OR BANKER

ENDORSEMENT

GUARANTEED

1940

MERCHANDISE BANK

FORMERLY

MERCHANDISE

AND TRUST COMPANY

CHICAGO

ILLINOIS

2-85

SEP 18 1940

2219

PAY TO THE ORDER OF

BANK OR BANKER

PRIOR ENDORSEMENT

GUARANTEED

FEDERAL RESERVE

2-85

M. Williams

Ret'd 12/13/44

Filed in U. S. District Court December 13, 1944.

Crystal Ballroom

NO. 1469

Dubuque, Iowa July 28 1944

Pay to the order of M. C. A. $125.00

One Hundred Twenty Five 00/100 DOLLARS

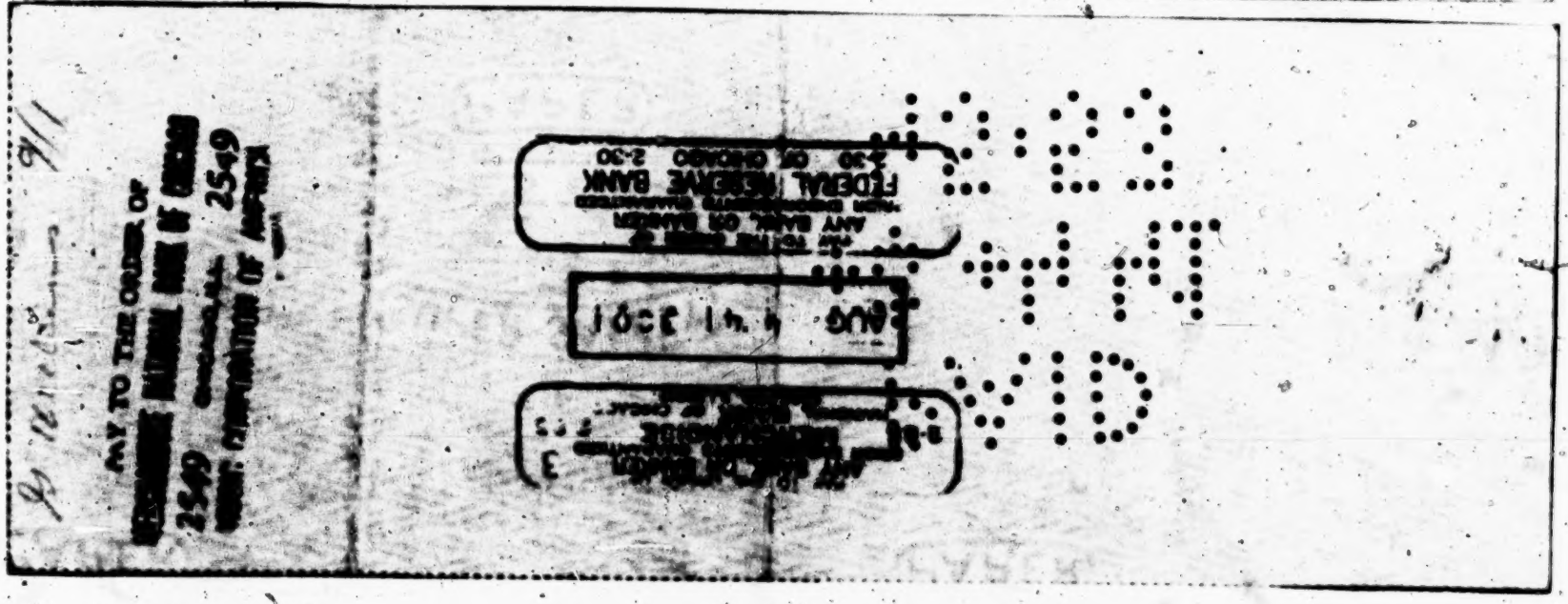
CRYSTAL BALLROOM

By Roy Bartels

TO DUBUQUE BANK & TRUST COMPANY

DUBUQUE, IOWA

45-53



[fol. 122] Q. When was the balance of the purchase price in the case of each engagement paid to,—Mr. Williams?

A. During the intermission of the night of the engagement.

Q. Do you know what Williams did with the money?

A. No, I don't. He put it in his pocket.

Q. What, if any, conversation did you have with Williams regarding the compensation of his side men for their services in playing each engagement?

A. None.

Q. Were you ever told by Williams what his side men received per each engagement?

A. No. No, sir.

Q. Well, what if any conversation did you have with any of Williams' side men with reference to his compensation for services in performing either engagement?

A. Nothing.

Q. What can you tell the court as to whether Williams ever delivered to you any written memorandum or other paper showing the amounts that were received by the side men for their services in playing each engagement?

A. No, he did not.

Q. Did anyone ever give you any memorandum or other paper with such information on it?

A. No.

[fol. 123] Q. State whether Williams ever gave you a receipt signed by the individual side men showing what each received for his services in performing either engagement?

A. No.

Q. You never received any such?

A. No, I didn't.

Mr. Cohen: Let the record show what side men, it was stated—

Q. What are side men?

A. Side men are what we call the musicians working for Griff Williams.

Mr. Padway: Now, if the court please, I know a good deal of the colloquial expressions, and we know that it is not intended that he is talking in legal terms, but he says

"working for Griff Williams," and we object to that as calling for a conclusion of law. He may work with Williams and that may be calling for a conclusion of law. It is understood what he means by the witness' answer his side men are a part of the group orchestra, of the orchestra named Griff Williams and his Orchestra. I have no objection, but I think that will help.

The Court: I think anybody will understand that is what he meant to say.

Q. It is the members other than the leader, isn't that [fol. 124] correct? A. That's right.

Q. What can you tell us as to whether or not the names of Griff Williams' side men were ever carried on any pay roll of the plaintiffs? A. No.

Q. That is, they were not? A. No.

Q. Was Griff Williams ever carried on the pay roll of the plaintiffs? A. No, sir.

Q. Did you ever have a conversation with any side men of Williams Orchestra with regard to compensation of any kind? A. No, sir.

Q. Now I will ask you, Mr. Bartels, what if anything did you have to do with the selecting of any of the side men of Griff Williams' Orchestra who played each engagement at the Crystal Ballroom? A. Nothing.

Q. What conversation, if any, did you ever have with any person with reference to his becoming a member of Griff Williams' Orchestra?

A. Nothing.

[fol. 125] Q. That is, you never had any conversation with anyone about that matter? A. No.

Q. What conversation, if any, did you ever have with Williams with reference to his selecting any side men?

A. I had no conversation.

Q. Regarding that matter? A. No.

Q. What conversation, if any, did you ever have with Williams with reference to his replacing side men in his orchestra?

A. No conversation at all regarding that.

Q. What can you tell the court as to whether you ever discharged any member of Williams' Orchestra?

A. I had no right to.

Mr. Padway: Now that is objected to as incompetent, irrelevant and immaterial. We are here to hear the case, and that is a conclusion.

The Court: Yes, I think it might have been. That is what he believed. After all the contract is the intention of the parties with reference to it.

Q. Did you ever attempt to? A. No.
Q. Why didn't you attempt to?

[fol. 126] Mr. Padway: Objected to as incompetent, irrelevant and immaterial.

The Court: It is a conclusion, I guess. Why is always a dangerous word. (Plaintiffs except).

Q. State your reasons, if any, for not attempting to discharge them.

Mr. Padway: Objected to for the same reasons as previously stated.

The Court: Overruled. Answer, please. (Interveners except).

A. I had no authority to.

Mr. Padway: That answer, I move to strike out as a conclusion of law.

The Court: Yes, sustained. (Plaintiffs except). You mean you believed you had no authority to do so?

A. That's right, sir.

The Court: I won't charge you for that.

Q. What do you recall as to whether Griff Williams and the members of his orchestra did anything on the occasion of the engagement of September 1, 1941, different than what they did on the occasion of his engagement of October 13, 1940?
A. They did no different. There was no difference in the performance.
Q. Was there any differences so far as acts of Williams [fol. 127] was concerned? A. No.
Q. His acts were the same on both occasions?
A. Yes.

Q. Are you a member of the American Federation of Musicians? A. No.

Q. Incidentally, I think once or twice you mentioned the Musicians Union during the course of your examination. To what organization do you refer?

A. To the American Federation of Musicians.

Q. Are any of the plaintiffs members of the American Federation of Musicians? A. No.

Q. Can you tell us as to what the—I will withdraw that. Do you have a Local of the American Federation of Musicians at Dubuque? A. Yes, sir.

Q. That is called the Dubuque Local, is it?

A. Well, I would guess that would be the word they used.

Q. What can you tell us as to whether your Local had a minimum scale of compensation for side men during the years 1940, '41 and '42? A. They did.

Q. Can you tell the court what that was?

[fol. 128] A. $5.00 per man for a four hour job.

Q. What can you tell the court as to whether the taxes which you pay to the defendant, and which you are seeking to recover in this action includes the employe's tax imposed by the Federal Insurance Contributions Act?

A. Will you repeat that, please?

(Question read by the reporter.)

A. It does.

Q. State whether the Employes' tax was withheld from any sums paid Williams? A. No.

Q. Whose funds were used to pay that tax?

A. Crystal Ballroom.

Q. Now did you have occasion to use some other orchestras during the year 1941 and also in early 1942?

A. Yes, sir.

Q. Was one of those orchestras known as Bill Carlsen and his orchestra? A. Yes, sir.

Q. Another one Tiny Hill? A. Yes.

Q. Boyd Raeburn? A. Yes.

Q. Buddy Fisher?

[fol. 129] A. Yes.

Q. Paul Moorhead? A. Yes.

Q. I will hand you now what the reporter has marked as Exhibits S, T, U, V, and W, and ask you to examine all

of those exhibits and tell the court if your signature appears on each one? A. Yes, sir.

Q. It appears on all of them? A. Yes, sir.

Q. Just tell the court briefly what each document is, identify it, trying to save time.

Mr. Padway: Maybe you can state what it is and save time.

The Court: I don't know what there is so delicate about that. Tell him what they are presumed to be and ask him what you want.

A. They are contracts made by the booking agents engaging all these different orchestras.

The Court: One of my pet peeves. Hand a man an exhibit and ask him what it is. The Supreme Court might have trouble knowing what it is.

Mr. Padway: These are the same things all the way through.

[fol. 130] Mr. Cohen: It seems to me that in these depositions which were taken, I realize they have not been offered yet, but there has been some reference to some contracts under different letters and it may confuse us to have different marks on these, for example, you are referring to Plaintiffs' Exhibit O in here, which is the Tiny Hill contract, and you are giving it another letter.

The Court: Are these photostatic copies?

Mr. Roberts: We have photostats, Your Honor, in the deposition.

The Court: They are referred to as photostats, that would not cause confusion, would it?

Mr. Cohen: We have no objection to the authenticity of the photostat, I just didn't think the record should be encumbered by having photostats and originals of the same contract.

Mr. Roberts: If the court please, the reason we used photostats was that we didn't know whether the deposition would be here in time.

The Court: Go ahead.

Q. Just take first, plaintiffs' Exhibit S, a contract for an engagement of Tiny Hill and his orchestra at the Crystal Ballroom for September 28, 1941. A. Yes, sir.

Q. And plaintiffs' Exhibit T is a contract dated No-
[fol. 131] vember 6, 1941, for an engagement of Buddy Fisher and his orchestra on November 23, 1941?

A. Yes, sir.

Q. And Exhibit U is a contract, dated July 12, 1941, for an engagement by Bill Carlsen at the Crystal Ballroom on August 17, 1941? A. Yes, sir.

Q. And Exhibit V is a contract, dated September 25, 1941, for an engagement by Boyd Raeburn and his orchestra at the Crystal Ballroom on October 5, 1941?

A. It is.

Q. And Exhibit W is a contract, dated June 25, 1941, for an engagement of Paul Moorhead and his orchestra at the Crystal Ballroom on Sunday, January 18, 1942?

A. It is.

Q. Did you prepare any of these contracts that I have just inquired about? A. No.

Q. From whom did you receive each contract?

A. From the different orchestras booking agencies.

Q. In the case of Exhibit V that would be William Morris, Agency Booker? A. Yes, that would be.

Q. And in the case of Exhibit U that would be the
[fol. 132] Music Corporation of America? A. Yes, sir.

Q. And in the case of Exhibit T that would be Frederick Bruce Music Corporation? A. That is correct.

Q. And in case of Exhibit S, that would be Frederick Bruce Music Corporation? A. That is correct.

Q. In the case of Exhibit W that would be Dick Schroeder at Omaha? A. Yes.

Q. Did you represent the plaintiffs in handling the negotiations for each of these engagements? A. I did.

Q. Now tell the court whether any of these orchestras had ever played previously for the Crystal Ballroom, that is prior to the date specified in the contract?

A. I think most of them have, yes.

Q. What can you tell the court as to the approximate number of years Bill Carlsen had been in existence?

A. Oh, possibly eight or ten years.

Q. And that is prior to the time that they appeared at the Crystal Ballroom? A. That is right.

[fol. 133] Q. And what about Tiny Hill?

A. Oh, he had been operating for fourteen years.

Q. What about Boyd Raeburn?

A. Boyd, I don't know how long he had been operating, but quite some time.

Q. What about Buddy Fisher?

A. Buddy, Buddy had an orchestra away a long back, I don't know.

Q. Several years prior to the time he played for the Crystal Ballroom? A. Yes.

Q. What about Paul Moorhead?

A. Oh, Paul—Paul played for us back in 1935, '34 and '36.

Mr. Cohen: I object to the answers on the ground that they are not responsive to the question. I believe the question was how long these orchestras have been in existence and the witness is answering that these various leaders had played, I assume we are talking about the orchestras mentioned in this contract which may or may not be the same ones that appeared five or six or seven years ago.

The Court: I wish you lawyers would find out that there is a rule that nobody has a right to object to the witness' answering the question, excepting the person that asks the question. Every lawyer in the United States seems [fol. 134] to think he has the right to make that objection, and that is not the rule. If it is competent and the other side asks the question, doesn't make any difference whether it is responsive or not, that is entirely an objection for the man that asked the question. Overruled. I won't charge you for that, either. (Defendant excepts).

Mr. Padway: I am becoming suspicious as to what will happen when you do get to charging us for it.

Q. Mr. Bartels, what can you tell the court as to the various types of establishments or organizations for which these five orchestras play engagements?

A. Oh, I know establishments all over the country from ballrooms to theatres, college dances and radio programs.

Q. In clubs or lodges?

A. Yes, clubs, the Elks Clubs.

Q. Now what can you tell the court as to whether you had any conversation with the leader of any of these orches-

tras prior to or at the time of the signing of the contrac for his particular orchestra's engagements?

A. No.

Q. Did you have any conversation with the side men of any of these orchestras prior to the time or at the time of [fol. 135] the signing of the contract for that particular orchestra?

Mr. Padway: May I interrupt? I am perfectly willing that the evidence previously given from this witness respecting his method and manner of operation with Williams be understood to be the same with respect to all of the other leaders, it will save a lot of time. If you are satisfied, you may not be, but as far as I am concerned, to shorten it up by stipulating that if you are willing to stipulate it.

Mr. Charlton: You are willing to stipulate including any further testimony that he may give?

Mr. Padway: I don't know what further testimony, but if you are going to go all over these orchestras, what he has said with respect to Griff Williams may be taken as far as I am concerned, as the evidence you would adduce with respect to the other plaintiffs, but if you have anything to vary it by, do so now, but I don't know about the Government, they are sticklers.

Mr. Charlton: If the court please, we tried to stipulate several months ago to that effect, and I sent a signed stipulation to Washington, and at that time it was not agreeable to the department.

Mr. Cohen: But I did tell you that during the trial we would so stipulate.

[fol. 136] Mr. Charlton: Before you were in the case.

Mr. Cohen: Well, I cannot talk for anyone else.

(Question read by the reporter.)

Mr. Cohen: I am only too glad, Your Honor, to stipulate that so far as the actual operations of these orchestras is concerned, they operate according to the—that the witness' testimony according to their operations would be the same as his testimony concerning the operations of Griff Williams' Orchestra. It is unfortunate that those questions

are not available so that we could agree all of the questions answered would be the same, but I suppose in a general way we may say the manner of operation, his testimony concerning the manner of operation would be the same for these orchestras as was his testimony regarding the operation of the Griff Williams' Orchestra.

Mr. Charlton: As proof of what he did with each of the engagements?

Mr. Cohen: Well, Your Honor, yes, I think that will be included, for example, as to whether he told them which room to take or whether he knew what their association was.

Mr. Charlton: All facts pertaining to the performance of each of the other five engagements as pertaining to the [fol. 137] acts of the leader and the acts of the side men and the contract and acts of the witness as manager of the Crystal Ballroom were identically the same with respect to all six orchestras, and the testimony relative to the Griff Williams' engagement shall be taken as indicating the true facts with respect to each of the other engagements.

Mr. Cohen: No, not as indicating the true facts, but as being the same testimony he would give with regard to the other engagements. Yes, I am agreeable to that.

Mr. Charlton: Is that agreeable with you, Mr. Padway?

Mr. Padway: Oh, yes, sure.

Q. And what can you tell us as to whether each of these five orchestras had a distinguishing style of—

A. Yes, they all had a distinguishing style.

Q. I will ask you about it very generally, I think. Tell the judge briefly what the style of each one of them was, as you recall?

A. Boyd Raeburn's style of music is fast. It is, you know, a band. He carries more faster style of music. Paul Moorhead was also, fifteen pieces, six trombones, one trumpet. Paul, by the way, carried his own lighting equip- [fol. 138] ment. Paul would come in some time in the afternoon and have his whole thing in there, and have his lighting put up in the building and his orchestra place. Tiny Hill, the largest Band leader, he was the largest in the

world, 385 pounds. Only eleven piece Hill Billy Band on the road that I—Buddy Fisher was quite an entertainer, and he entertained Al Jolson and several of those stars and could hit two or hit on one.

Q. You mean imitate?

A. Yes, he was an imitator. Bill Carlsen was another Band that carried considerable entertainment. Bill himself —Bill had the Zilch Brothers that were on the stage. They were comedians. That is about all I can tell you about it.

Q. How did you become familiar with the particular quality of these—each of these orchestras?

A. These booking agencies would exploit them, air time.

Q. Then some of them you had used before?

A. Yes, feature engagements.

Q. By air time you mean radio performances?

A. Yes.

Q. On whom did you rely in each instance to bring that special quality you have testified to in each case?

A. The leader of these orchestras.

[fol. 139] Q. That would be for your patrons that would be at your dance hall that particular night?

A. That is right.

Q. You mentioned Paul Moorhead. Do you recall how his orchestra traveled to Dubuque?

A. Yes.

Q. How was that? A. By sleeper bus.

Q. What, if anything, did it have on the outside of the bus?

A. Letters, I would say two feet high, across the top of the bus "Paul Moorhead and His Orchestra."

Q. Have you seen the inside of the bus?

A. Yes.

Q. You mention it being a sleeper. How many men would it sleep?

A. Ten to twelve, it would take care of his full Band.

Q. Who owned that bus if you know?

A. Paul Moorhead.

Mr. Padway: Well, I think that as far as he knows it may have been owned by the American Corporation of Music. I think the witness ought to be asked—well, I can cross-examine him on that as to how he know it. I will agree that he don't know.

The Court: It isn't very important anyhow, is it, wheth-
[fol. 140] er he leased it—

Q. I will hand you what the reporter has marked Exhibit T and ask you to turn to the reverse side of the exhibit and ask you to tell the court whether you prepared any of the entries appearing thereon?

A. I did not.

Mr. Padway: Whose contract are you referring to?

A. Buddy Fisher, November 23, 1941.

Mr. Padway: I thank you.

Q. I call your attention to the names of the side men appearing thereon and ask you if you know now any of those men that are listed on that? A. No.

Q. Now I will ask you to examine the column entitled "Wages", you find some amounts listed there?

A. Yes.

Q. Did you have anything to do with fixing the amount shown in that column entitled "Wages"?

A. No.

Mr. Padway: Objected to as calling for a conclusion.

The Court: Overruled. (Intervener excepts.)

Q. Can you tell the court as to whether the amounts shown on there are above or below the Union scale at Dubuque, Iowa?

[fol. 141] A. They are above.

Q. Incidentally, Mr. Bartels, were these, all this information on the reverse side of Exhibit T appearing there at the time you signed the contract?

A. No, it did not.

Q. Did the contract go out of your hands right after you signed it?

A. I sent it back to the booking agency.

Q. That is Exhibit T?

A. That is right.

Q. And some time later it did come back into your hands? A. Yes, sir.

Q. Plaintiffs' Exhibit X, a check of the Crystal Ballroom in the amount of $125 to the Music Corporation?

A. It is.

Q. And that is a deposit payment on Tiny Hill's Orchestra? A. On Tiny Hill's Orchestra.

Q. And what about Exhibit Y, is that a check made by the Crystal Ballroom, dated July 14, 1941, payable to the Music Corporation of America in the sum of $125, is that a deposit on Bill Carlsen's Orchestra?

A. Yes, sir.

Q. Exhibit Z, is that a check in the amount of $125, dated July 14, 1941, "Pay to the Order of Frederick Bruce, Mu-
[fol. 142] sic Corporation in payment of a deposit on Tiny Hill's Orchestra"?

A. Yes, sir.

Mr. Roberts: Plaintiffs offer in evidence Exhibits X, Y, and Z.

Mr. Cohen: I have no objections to the exhibits, but I would suggest for the record that we may save the encumbering of this record in this proceeding if we avoid the physical incorporation of these things into the record. The Government is certainly willing to stipulate that these amounts were paid.

The Court: That is a matter between you attorneys, that is one thing I don't have to worry about, what your agreements are.

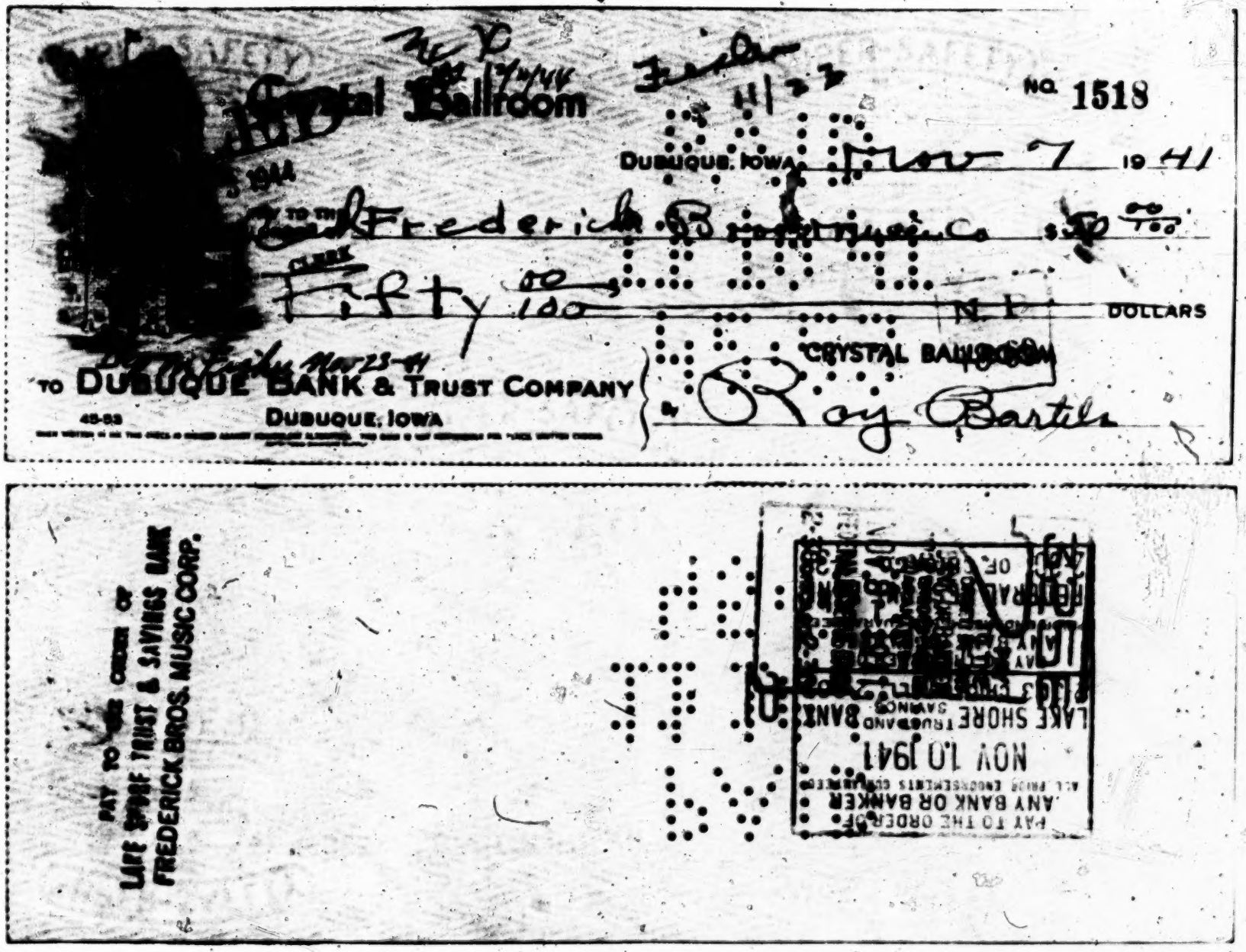
Mr. Roberts: And delivered to the payee?

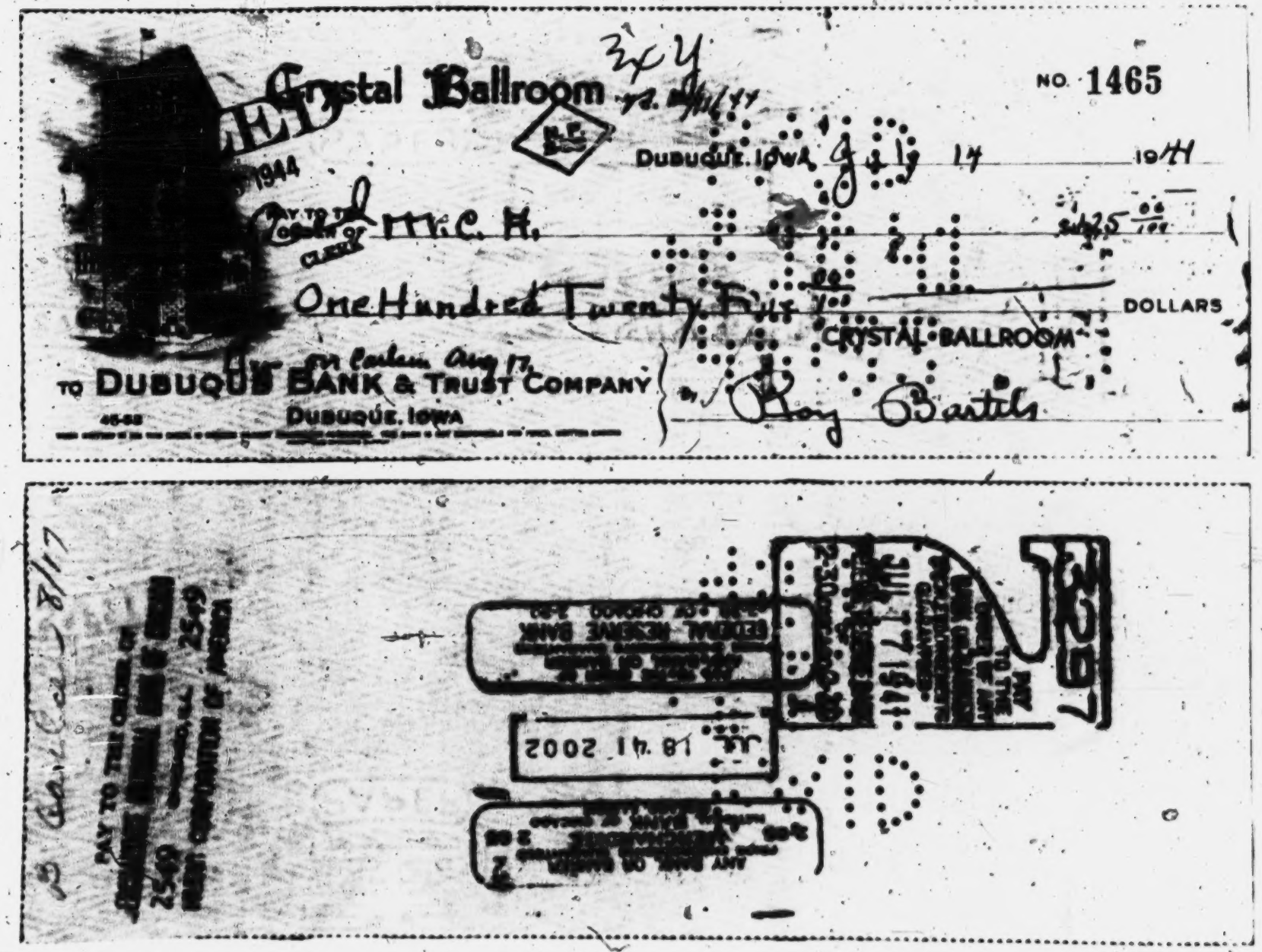
The Court: These are pretty nice boys. Ask them now.

Mr. Roberts: They are all in now.

The Court: I guess there is no objection to them. They will be admitted.

Plaintiffs' Exhibit X.
Filed in U. S. District Court December 13, 1944.





Crystal Ballroom

NO. 1465

DUBUQUE, IOWA July 14 1944

PAY TO THE ORDER OF CLERK U.S.C.H. $125.00

One Hundred Twenty-Five 00/100 DOLLARS

CRYSTAL BALLROOM

TO DUBUQUE BANK & TRUST COMPANY

DUBUQUE, IOWA

By Roy Bartels

For Parlam Aug 17

4648

PAY TO THE ORDER OF

2549

8/17

Plaintiffs' Exhibit Z.
Filed in U. S. District Court December 13, 1944.

Crystal Ballroom

NO. 1464

DUBUQUE, IOWA July 14 1941

Pay to the order of Frederick Bros Music Corp $125 00/100

One Hundred Twenty Five 00/100 DOLLARS

CRYSTAL BALLROOM

By Ray Bartel

TO DUBUQUE BANK & TRUST COMPANY
DUBUQUE, IOWA

45-53

PAY TO THE ORDER OF
LAKE SHORE TRUST & SAVINGS BANK
FREDERICK BROS. MUSIC CORP.

[fol. 149] Mr. Padway: I think it would be better to get these in evidence before you get the checks in because we are liable to overlook them.

Mr. Roberts: Plaintiff at this time offers in evidence Exhibits S, T, U, V, and W.

The Court: I guess there is no objection to them. They may be admitted. They are original copies of the contract.

Pls X
DS. 12/11/44

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138

FILED

DEC 1 - 1944

R. Reed
CLERK

# FREDERICK BROS. MUSIC CORPORATION

520 NORTH MICHIGAN AVENUE

CHICAGO, ILLINOIS

THIS CONTRACT for the personal services of musicians, made this [redacted] day of [redacted] 194[redacted]

between the undersigned employer (hereinafter called the employer) and [redacted] musicians (including Leader) (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of [redacted], according to the following terms and conditions

Place of employment [redacted]

Date(s) of employment [redacted] $125.00 deposit received.

Hours of employment [redacted]

Price agreed upon $ [redacted] (Terms and amount)

To be paid [redacted] (Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Plaintiffs' Exhibit S
Filed in U. S. District Court December 13, 194

authority for the amount stated herein.

Name of Employer [redacted]

Street Address [redacted]

City or State [redacted]

Phone

FORM B

(1) Printed in U. S. A.

Accepted by Employer Roy Bartels

Accepted Leroy Orfall
(Orchestra Leader)

By
(Representative of Employer)

944.

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Plaintiffs' Exhibit S.
Filed in U. S. District Court December 13, 1944.

85

| NAMES OF EMPLOYEES | LOCAL NUMBER | S. S. NUMBER | WAGES |
|---|---|---|---|
| Tiny Hill (Leader) | 89 | 325-14-4584 | $ |
| Melvin Mountjoy | 89 | 325-14-4582 | |
| F. C. Patterson | 20 | 521-05-7342 | |
| R. W. Schreiber | 798 | 325-14-4577 | |
| Robert Kramer | 798 | 332-10-7111 | |
| Kermit Coffeen | 798 | 325-14-4578 | |
| Norman Maxwell | 183 | 345-03-9515 | |
| Ralph Richards | 20 | 523-07-0030 | |
| Robert Walter | 26 | 325-14-5950 | |
| Lloyd Mc Cann | 25 | 410-07-9505 | |
| Russ Phillips | 200 | 497-10-5215 | |
| Bob Freeman | vocalist | 350-07-7566 | |
| | | | |
| | | | |
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FILED Contract Blank 22/7/44 No. 569

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# FREDERICK BROS. MUSIC CORPORATION

520 NORTH MICHIGAN AVENUE

CHICAGO, ILLINOIS

THIS CONTRACT for the personal services of musicians, made this 6 day of [redacted], 1944

between the undersigned employer (hereinafter called the employer) and [redacted] musicians (hereinafter called employees) represented by the undersigned representative.
(including Leader)

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of [redacted], according to the following terms and conditions:

Name and Address of Place of Engagement [redacted]

Date(s) of Employment [redacted]

Hours of Employment 9pm to 1am

$50.00 Deposit received
Joe Kayne

PRICE AGREED UPON $ 100.00 GUARANTEE PRIVILEGE 50% (Terms and Amount)

To be paid $50.00 DEPOSIT. BALANCE NOVEMBER 25, 1941 (Specify When Payments Are To Be Made).

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer ROY BARTELS

Street Address P. O. BOX 321

City or State [redacted]

Phone

Accepted by Employer Roy Bartels

Accepted Buddy Fried
(Orchestra Leader)

By Joe Kayne
(Representatives of Employees)

FORM B

Printed in U. S. A.

Plaintiffs' Exhibit T.
Filed in U. S. District Court December 13, 1944.

Filed in U. S. District Court December 13, 1944. Plaintiffs' Exhibit T.

| NAMES OF EMPLOYEES | LOCAL NUMBER | S. S. NUMBER | WAGES |
|---|---|---|---|
| [illegible] Fisher (Leader) | 10 | [illegible] | $ 11.55 |
| [illegible] Veal | 413 | 400-12-2035 | 5.50 |
| [illegible] Moore | 512 | 512-12-0200 | 5.50 |
| George Drew | 514 | [illegible] | 5.50 |
| [illegible] Hawkins | 515 | 262-01-3018 | 5.50 |
| Paul Hadsock | 600 | [illegible] | 5.50 |
| Harry Webster | 2[illegible] | [illegible] | 5.50 |
| Joe McAnerney | 5[illegible] | [illegible] | 5.50 |
| Bill Orriston | 5[illegible] | 432-01-00[illegible] | 5.50 |
| [illegible] Sulzer | 5[illegible] | [illegible] | 5.50 |
| Nicholas Musolino | 6[illegible] | [illegible] | 5.50 |
| Warren Durrett | 1[illegible] | 507-12-0780 | 5.50 |
| Gypsy Edwards | Nonunion | 301-05-0035 | 6.00 |
| | | | |
| | | | |

FILED

DEC 1 : 1944

Contract Blank

RECEIVED
CHICAGO OFFICE
MUSIC CORPORATION
OF AMERICA

Ex U
OS 12/11/44

# MUSIC CORPORATION OF AMERICA

CLERK

1941 JUL 12 AM 9:


16 Old Bond St., W. 1. LONDON Phone Regent 6508 | 745 Fifth Avenue NEW YORK Phone Wickersham 2-8900 | 430 N. Michigan Ave. CHICAGO Phone Delaware 1100 | M C A Building BEVERLY HILLS Phone Bradshaw 23211 | 111 Sutter Street SAN FRANCISCO Phone Exbrook 8922 | Union Commerce Bldg. CLEVELAND Phone Cherry 6010 | Tower Petroleum Bldg. DALLAS Phone 2-1448


THIS CONTRACT for the personal services of musicians, made this 12th day of JULY, 194 1

between the undersigned employer (hereinafter called the employer) and twelve (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of BILL CARLSEN, according to the following terms and conditions:

Place of employment CRYSTAL BALLROOM DUBUQUE, IOWA

Date(s) of employment AUGUST 17, 1941

Hours of employment

Price agreed upon $ $250 GUARANTEE WITH PRIVILEGE OF 60% OF THE GROSS RECEIPTS
(Terms and amount)

To be paid $125 DEPOSIT; BALANCE BEFORE 11 PM NIGHT OF ENGAGEMENT
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer CRYSTAL BALLROM by Roy Bartels

Street Address P.O. BOX 371

City or State DUBUQUE, IOWA

Phone 6363

Accepted by Employer Roy Bartels

Accepted (Orchestra Leader)

By MUSIC CORPORATION OF AMERICA
(Representatives of Employers)

FORM I: (1) Printed in U. S. A.

Plaintiffs' Exhibit U.
Filed in U. S. District Court December 13, 1944.

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FILED

DEC 1 1944

# Contract Blank

12/11/44

# AMERICAN FEDERATION OF MUSICIANS

## Local No. [redacted]

THIS CONTRACT for the personal services of musicians, made this [redacted] day of [redacted], 194[redacted]

between the undersigned employer (hereinafter called the employer) and 24 [redacted] musicians (hereinafter called
(including Leader)
employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the

leadership of [redacted], according to the following terms and conditions:

Place of employment CRYSTAL BALLROOM - DUBUQUE, IOWA

Date(s) of employment OCTOBER 8th, 1941

Hours of employment (Fill in)

Price agreed upon $ $198.00 GUARANTEE AGAINST 60% PRIVILEGE OF GROSS RECEIPTS.
(Terms and amount)

To be paid BY 11:00 P.M. EVENING OF ENGAGEMENT.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer MR. ROY BARTELS

Street Address CRYSTAL BALLROOM

City or State DUBUQUE, IOWA

Phone

Accepted by Employer Roy Bartels

APPROVED:
WILLIAM MORRIS AGENCY,
BY. H. C. Snyder

(Orchestra Leader)

By Floyd Ramsay
(Representative of Employees)

Countersigned and affirmed by MORRIS SILVER,
RESIDENT MANAGER

(Signatured by) Floyd Ramsay

BOOKING SLIP No. 5710

FORM B
(1) Printed in U. S. A.

Plaintiffs' Exhibit V.
Filed in U. S. District Court December 13, 1944.

93

FILED

DEC 1 2 1944

N. F. Reed

CLERK

VSA

3 W

W. 12/11/44

# VIC SCHROEDER AGENCY

Omaha, Nebr.

| Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra |
|---|---|---|---|---|---|---|---|---|

THIS CONTRACT for the personal services of musicians, made this 25 day of June, 194 1 between the undersigned employer (hereinafter called the employer) and Ten (10) Men (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Crystal Ballroom<br>Dubuque, Iowa | Sunday, January 18, 1942 | From 9:00 P.M. to 1:00 A.M. |

1942 Contract

PRICE AGREED UPON IS: 100.00 guaranteed; plus the privilege that the attraction may take 60% of gross receipts
(Terms and amount)

To be paid on or before 10:00 P.M. on date of engagement 40 cents 40 Bills
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the engagement hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

A written notice by Registered Mail, Return Receipt Requested, or by Telegram, addressed to the other party hereto GIVING EIGHT WEEKS NOTICE of cancellation of this contract, shall be permissable on the part of either party.

The employer ESPECIALLY AGREES that the price hereof, DOES NOT INCLUDE ADVERTISING OF ANY KIND; and that unless said employer specifies amount wanted, the assortment and quantity shipped, will be accepted.

Name of Employer: Roy Bertels — Accepted by Employer: Roy Bertels

Street Address: Crystal Ballroom — Accepted: (Orchestra Leader)

City or State: Dubuque, Iowa — By: N. Immona (Representative of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1260, Omaha, Nebraska.

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No 5327 A

Plaintiffs' Exhibit W.
Filed in U. S. District Court December 13, 1944.

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[fol. 157] Q. I hand you now what has previously been marked plaintiffs' Exhibit S, and ask you to examine the reverse side, and I will ask you if you have anything to do with preparing the typewritten entries appearing on the reverse side? A. No, I didn't.

Q. What can you tell the court as to whether or not those entries were on the contract at the time you signed it? A. No, they were not.

Q. Did the contract go out of your hands?

A. Yes, it did.

Q. And later come back to you? A. Yes.

Q. That is the contract for the engagement of Tiny Hill and his orchestra? A. Yes, that is right.

Q. What can you tell the court as to whether the entries on the reverse side of that exhibit, and the entries on the reverse side of the contract for the engagement of Buddy Fisher's Orchestra, whether they are one of the orchestras on which information appears on the reverse side of the contract involved herein.

Mr. Cohen: I object on the ground the contracts speak for themselves and are the best evidence.

The Court: Overruled. (Defendant excepts.)

[fol. 158] A. These are the only two.

Q. That is Buddy Fisher and Tiny Hill?

A. Buddy Fisher and Tiny Hill.

The Court: There is no question whether you complied with the requirement.

Q. I hand you now what the reporter has marked Exhibit A-1 and A-2, and ask you if Exhibit A-1 is a yellow printed sheet entitled "Social Security Tax Report" with some typewritten entries appearing thereon? A. It is.

Q. Whose name appears in the lower right-hand corner?

A. Well, Tiny Hill.

Q. I will ask you if Exhibit A-2 attached to Exhibit A-1 is a postoffice money order, dated November 15, 1941?

A. That's right, it is.

Q. Payable to the order of Roy Bartels?

A. Payable to the order of Roy Bartels.

Q. And who was listed as the remitter?

A. Tiny Hill.

Q. And what can you tell the court from looking at the date of the postoffice money order as to when you received those documents?

A. I received it some time after November 15, 1941.

Q. And just how did you receive them?

[fol. 159] A. By mail.

Q. Through the mail? A. Yes, sir.

Q. Were those two documents clipped together at the time you received them? A. Yes, sir.

Q. State whether or not any typewritten entries appear on Exhibit A-1, were prepared by you?

A. No, sir.

Q. What can you tell the court as to whether the amount shown in the column entitled "Wages," on Exhibit A-1, were above or below the scale of the Dubuque Local American Federation of Musicians?

A. They were above.

Q. What, if anything, did you have to do with fixing the amounts shown on Exhibit A-1 as wages?

A. Nothing.

Q. Did you ever receive from any of the side men of Tiny Hill's Orchestra there in that receipt showing the amount received by them for their engagement at the Crystal Ballroom? A. No.

Q. Now what can you tell the court as to whether the plaintiffs ever carried the names of the leaders or the side [fol. 160] men of any of these five orchestras we have been inquiring about on their pay roll? A. No.

Q. On the plaintiffs' pay roll? A. No.

Mr. Roberts: Plaintiff at this time offers in evidence Exhibits A-1 and A-2.

Mr. Cohen: May we have a chance to look them over for a moment, if the court please.

Mr. Padway: There is no objection to plaintiff's Exhibit A-1, entitled "Security Tax Report, Tiny Hill's Orchestra" on the part of the interveners.

Mr. Cohen: No objection.

Mr. Padway: And to it is attached a money order of ninety-four cents. Are you offering the two as one exhibit?

Mr. Roberts: Each as a separate exhibit.

Mr. Padway: Then there is no objection on the part of the intervener to either exhibits.

Mr. Cohen: I have no objection.

The Court: Well, I guess they are admitted [them] if there is no objection.

[fol. 161] Plaintiffs' Exhibit A-1.

Filed in U. S. District Court December 13, 1944.

Social Security Tax Report

"Tiny" Hill's Orchestra Sept. 28, 1941

Employer's Name Roy Bartels Employed at Crystal Balrm.

Address ..... Address .....

City Dubuque, Iowa State..... City Dubuque State Iowa

| | | |
|---|---|---|
| Harry L. Tiny Hill | 325-14-4584 | 15.00 |
| J. Melvin Mountjoy | 325-14-4582 | 7.00 |
| F. C. Patterson | 521-05-7342 | 7.00 |
| Lloyd McCahan | 410-07-9505 | 7.00 |
| Russel Phillips | 497-10-5215 | 7.00 |
| Wally Fobart | 397-01-3132 | 7.00 |
| Kermit Coffeen | 325-14-4578 | 7.00 |
| R. W. Schreier | 325-144-577 | 10.50 |
| N. V. Maxwell | 345-03-9515 | 7.00 |
| Robert Walter | 325-14-5950 | 7.00 |
| Eugene Bolen | 368-16-3469 | 7.00 |
| Robert Freeman — Vocalist | 350-07-7566 | 5.00 |
| | | 93.50 |
| ..... | ..... | ..... |
| ..... | ..... | ..... |

Amount of Contract $250.60 Amount Paid Band.....$278.97
Sideman's Scale $5.00 Leader Scale $10.00 Union Tax $ 6.00

Commission Paid on this Engagement ..... $55.79

Actual Transportation @ $..... Per Mile..... $.....

Salaries as listed above ..... $93.50

155.29

123.68

The above figure of $123.68 is the net amount left on this particular engagement. This amount will be used for additional transportation, advertising, exploitation, additional booking expense, personal managers' salaries, sundries (cabs, lunches, etc.) of all kinds and any other legitimate expenses that may arise from time to time in the operation of this enterprise with the expenses listed at the end of the fiscal year, August 1, 1942, any excess amount will be charged at that time to Harry L. Hill's personal income and income tax made out accordingly.

Soc. Sec. 1% — $ .94

Signed H. TINY HILL

[fol. 162] Plaintiffs' Exhibit A-2.

Filed in U. S. District Court December 13, 1944.

$ 48100 Salt Lake City, Utah. 95225

*1 Office Number Serial Number

United States Postal Money Order
Identification required

Dollars # 94 Cents

Nov. 15, 1941

Postmaster at
Dubuque, Iowa

Pay amount stated above to order of payee named in attached coupon. Not good for more than largest amount indicated on left hand margin.

Any alteration or erasure renders this order void.

paying office

(Postal Money Order)

C. A. Smoot, Postmaster

Received payment:

Stamp here .....

.....

Paying postmaster detach coupon on this line

Salt Lake City, Utah.

48100
Office Number

95225
Serial Number

Coupon for Paying Office
Holder must not detach

..... Dollars 94 Cents
Write words for dollars Figures for cents

Pay to:
Roy Bartels

Remitter:
.....

H Tiny Hill
Lake City, Ill

(SEAL)
Salt Lake City, Utah
Nov
15
1941
M. O. R.

C. O. D. .....
Parcel Number

A-2
VG 12/1/44

[fol. 163] (Reverse Side)

Pay to.....
.....Payee

---

To transfer ownership the person in whose favor this order is drawn must sign on above line.

More than one endorsement is prohibited by law.

Upon payment of a fee of the same amount as that charged for the issue of the order the postmaster at any money order Post Office in the Continental United States, except Alaska, will pay this money order, if presented within thirty days from date of issue, although drawn upon another post Office provided the Order was issued at and drawn upon a Post Office in the Continental United States, exclusive of Alaska.

If not presented for payment before the expiration of one year from the last day of the month in which issued, an or-

der becomes invalid by law, and the owner should present it to the Postmaster, at a money order office, who will promptly forward it to the Department with an application for a warrant to be issued in lieu thereof free of charge.

Send the Order and coupon to the person to whom the money is to be paid.

Do not mutilate the order or coupon or detach them from each other, or alter them in any way.

Bank stamps are not regarded as endorsements.

Bank Stamps

.....

Paying Office

Stamp here

[fol. 164] Q. I believe you testified that early in your examination that some of these five, these last five orchestras we have been inquiring about had played for you previously? A. Yes, sir.

Q. Was that prior to June 1, 1941, these previous engagements? A. Yes, sir.

Q. What can you tell us as to whether there was any difference in what the side men and the leader of each of these orchestras did during the performance of their earlier engagements, and what the leader and side men of each of these orchestras did on the occasion of the engagements involved in this suit?

A. No, their performance was the same.

Q. There was no difference?

A. No difference.

Q. And you had nothing to do with the preparation of any contracts involved in this action, including Griff Williams' contract?

A. No, sir.

Q. Now you have testified as to various matters concerning which you gave no instructions or directions to the leaders and his side men. Do you have a belief as to whether [fol. 165] or not you could give instructions or directions to the leader?

Mr. Padway: That is objected to as the contract speaks for itself, and as to what he could have done, and that is objected to as incompetent, irrelevant and immaterial, varying the terms of a written instrument.

The Court: Overruled. As I understand it, this is a contract—an attack on the contract by a third party. Overruled. Answer, please. (Intervenors except.)

A. I always believed I never had anything to do with them, and never had any instruction.

Mr. Padway: I object to the answer and move to strike it on the basis of the previous objection.

The Court: Overruled. By the way, you want exceptions, it is not required, but I suppose by agreement, the reporter can put in the exceptions on all adverse rulings on both sides. (Intervener excepts.)

Mr. Level: It is so agreed.

Mr. Roberts: That is agreeable.

Q. That was true, your belief was true with respect to each of the Orchestras you have inquired about and the leaders?

A. That is right.

Mr. Padway: Same objection.

The Court: Same record. (Interveners except.)

[fol. 166] Mr. Roberts: I believe that is all of the direct examination, Your Honor.

The Court: All right, cross-examine.

Cross-Examination.

By Mr. Cohen:

Q. Mr. Bartels, I believe you testified on direct examination that these various contracts were submitted to you by several booking agencies, is that correct?

A. Yes, sir.

Q. Now, let's take the Griff Williams' contract. That was submitted by MCA, Mr. Breyley; is that correct?

A. Of September 1, 1941, yes, sir.

Q. Now did you read the contract at that time?

A. I did.

Q. You knew what it contained?
A. I did.
Q. Did you know that the contract purported to give you the right of control over the musicians, including the leader?

Mr. Roberts: Objected to as calling for a legal opinion and calling for the conclusion of the witness.

The Court: Overruled. Answer, please. (Plaintiffs except.)

(Question read by the reporter.)

A. Well, I know that the—I deny I had the right to con-
[fol. 167] trol.

Mr. Cohen: I move to strike out the answer as not responsive.

The Court: Sustained. (Plaintiffs except.)

(Question read by the reporter.)

A. I knew that was in the contract, yes.
Q. Now did you also know that the contract refers to the Crystal Ballroom as the employer of these side men?
A. Yes.
Q. And did you know that you authorized Griff Williams or the representative leaders of the other Orchestras to distribute to the side men on your behalf the moneys which you paid for the engagement? A. Yes.
Q. Now you read the other terms of the contract, isn't that correct? A. Yes.
Q. So that you knew it was in the contract?
A. Yes.
Q. Now at the time Tiny Hill's Orchestra performed at your establishment, you had a certain number of side men, isn't that correct?
A. I don't understand.
Q. How many side men did Tiny Hill have at your es-
[fol. 168] tablishment on the date of his engagement in 1941?
A. Well, you would have to give me the contract.
Q. I show you plaintiffs' Exhibit S, and ask you to refresh your recollection.
A. Eleven.

Q. Now did you have a copy of this contract at the time of the engagement?

A. Yes, sir.

Q. Was this the contract which had been signed by you, submitted to Frederick Bruce's Music Corporation and returned to you with the names of the musicians filled in?

A. That is the contract that I had.

Q. Then isn't it true that at the time they played at your establishment on September 28, 1941, that you have in your possession the names, the Social Security numbers of the various musicians, including the leader?

A. Yes.

Q. And isn't that true also of the engagement of November 23, 1941, of Buddy Fisher and his orchestra?

A. I believe so.

Q. So that if on those two occasions you did not know the names of the side men, it was due to your own failure to look at the contract that you signed?

A. The contract as I signed it at that time didn't have [fol. 169] those names on.

Q. But at the time the engagement, the names were in your possession, isn't that true?

A. Yes, that's right.

Q. Now did you at the time of the engagement of Griff Williams, Paul Moorhead, Boyd Raeburn, ever ask those leaders for the names and social security numbers of the side men in their orchestras?

A. I did not.

Q. Did you ever request them as to how much was being paid by them as your agent to the side men?

Mr. Roberts: Objected to as assuming facts not in evidence, and an attempt to invade the province of the court.

The Court: This is cross-examination. Overruled. Answer. (Plaintiffs except.)

(Question read by the reporter.)

A. I did not.

Q. Did you ever request them to give you the social security numbers of the side men?

A. No.

Q. So it is true, isn't it, Mr. Bartels, that at no time did any of these leaders withhold that information from you?

[fol. 170] A. Well, that was not on the contract.

Q. You never asked for that information from these leaders, isn't that correct?

A. No, I deny that I am the employer of these men.

Q. We know you deny that, but answer the question.

A. What is the question?

(Question read by the reporter.)

A. That is right.

Q. Now, Mr. Bartels, I believe you stated on direct examination that you were not a musician yourself, is that correct?

A. That is right.

Q. Now were any of these members of the partnership which does business as the Crystal Ballroom, musicians?

A. No.

Q. Now did you ever contract any musicians who performed at your ballroom as to the tempo in which they should play, or the uniforms they should wear or the intermission that they should take, or the path along which they should walk during the intermissions?

A. No.

Q. In fact, am I correct, that you were never at the ballroom until after the musicians started to playing?

A. I would be at the ballroom in the afternoon to look [fol. 171] the place over, yes.

Q. At the time that they commenced their performance, you were not there, is that correct?

A. I would not be in the ballroom at that time.

Q. Now was there anyone in charge of the Crystal Ballroom who may have given instructions to these musicians? A. No, there would not be.

Q. Well, did you depend upon the musicians themselves to conduct themselves according to your sense of deportment or the proper deportment?

A. The leaders usually took charge of that.

Q. Is it a correct statement that you entrusted to the leaders the control of those matters?

A. He is the man that engaged these musicians, yes. He was responsible for that.

Mr. Cohen: I move to strike that as not responsive to the question.

The Court: Sustained, yes. (Plaintiffs except).

Q. You can answer that yes or not.

(Question read by the reporter.)

A. Yes.

Q. Now are you able to tell the court whether—Strike that, please. Now I believe it is true that on November 23, 1941, Buddy Fisher and his Orchestra performed at your [fol. 172] ballroom, isn't that correct?

A. That is correct.

Q. Now can you state for how long a period the aggregation of musicians who played at that time had been organized as Buddy Fisher and [redacted] Orchestra?

A. Oh, I have heard of them for years.

Q. Have you ever heard of these side men for years?

A. No.

Q. You don't know whether he had this orchestra or another orchestra previous to this engagement?

A. That is right.

Q. In other words, this orchestra may have come into existence for this particular engagement, isn't that correct? A. Their performance—

Q. So far as you know?

A. Their performance didn't indicate that they were wild recruits.

Q. Now is that also true of the various other orchestras which are involved in this case? A. That is right.

Q. You cannot tell whether they were in existence for a day or for a year or more except for the quality of their performance together?

A. Some of them have played for me before, I know [fol. 173] they were in existence.

Q. You know they were in existence?

A. Griff Williams played for me back in 1940, '39.

Q. Now did you know the side men in his orchestra who performed at that time? A. No.

Q. Do you know the side men in his orchestra who performed on September 1, 1941? A. No.

Q. Well, then you cannot tell, Mr. Bartels, whether the same orchestra played previously or not?

A. I bought Griff Williams and his orchestra.

Q. But you don't know whether the particular aggregation which played on September 1, 1941, was the same orchestra which played before, do you?

A. I would have no way of telling that.

Q. I am not sure that I understand what plaintiffs' Exhibit A-1 is, it purports to be a list of Tiny Hill's Orchestra on Social Security Tax report. When was that list furnished to you?

A. That was furnished to me some time after November 15, 1941.

Q. And is plaintiffs' Exhibit A-2 a money order of Tiny Hill to you for ninety-four cents?

[fol. 174] A. That is right.

Q. Now what was that for?

A. That was the list, that was in payment of this list Tiny sent me which he said was the side men of his orchestra.

Q. Didn't you testify in direct examination that none of the contributions which you made to the Government had been obtained by you from these musicians?

A. That money order is not cashed, I paid it out of my own fund, that contribution.

Q. You never cashed out this money order?

A. No, Tiny Hill had it. I would not have it if I had cashed it.

Q. And as far as any of the other musicians are concerned, they never paid you any contributions? A. No.

Q. None of them, including the leaders? A. No.

Q. Now, Mr. Bartels, am I correct—I want to be sure about this—that at no time did you give instructions during the playing of these particular engagements to the leader or to the side men? A. That is correct.

Q. Is that correct?

[fol. 175] A. That is right.

Q. It is also true that at no time did the leader or any of the side men refuse to obey any of your instructions?

A. I gave them no instruction.

Mr. Cohen: I have no further questions.

Cross-Examination.

By Mr. Padway:

Q. Mr. Bartels, at the outset of your direct examination by Mr. Roberts, you said you protested this contract when it was submitted to you? A. That is right.

Q. Did you use the word object to it?

A. That is right.

Q. Did you object to the fact that your contract, the sum to be paid was to be a $350 guaranty? A. No, sir.

Q. Did you object to that, that there was 60 per cent of it, of the gross receipts? A. No, sir.

Q. Didn't object to that as a bonus in event it went higher than $350? A. That is right, sir.

Q. Didn't object to that? A. No, sir.

[fol. 176] Q. Did you object that the engagement was to be fixed for September 1st or was that in agreement between you?

A. That was the agreement between us.

Q. September 1, 1941. Did you object that the number of men to be employed was thirteen, including the leader?

A. No, I didn't object to that.

Q. Did you object that the leader would take the sum of money and distribute it among the men?

A. I didn't know what he would do with his money. I paid the money to Mr. Williams.

Q. You knew he was to distribute that if you read this contract? A. That is right.

Q. And you knew that you were purchasing and engaging the personal services of the employes as musicians severally. You know what the word severally means, do you? A. Yes, sir.

Q. And that each one was being engaged by you, is that what you objected to? A. Yes, sir.

Q. You objected to that? A. Yes, sir.

Q. Now you read on further, I presume that they agreed to render collectively to the employer services as [fol. 177] musicians in the orchestra under the leadership of Griff Williams. Did you object to that?

A. I objected to it. Read the whole clause, it is not fair to take out—

Q. I will read the whole paragraph. It says here: "That the employer employs the personal services of the employes as musicians severally, and the employes severally through their representatives agree to render collectively to the employer services as musicians in the orchestra under the leadership of Griff Williams to only the terms and conditions."

A. I objected to the word "employer" in that contract.

Q. And you objected to the word "severally," that you were employing these men severally, is that right?

A. Well, you mean individually when you talk severally?

Q. Yes, that's right.

A. I—yes, I objected to that.

Q. You objected to the fact that it is stipulated there that there were to be thirteen musicians including the leader you were employing?

A. No, I didn't object to the thirteen musicians, that was his orchestra.

Q. What you objected to was to being designated employer of the division?

[fol. 178] A. That is right.

Q. You didn't object, of course, to the place where they were to be employed because that was your ballroom?

A. That is right.

Q. Did you have a platform in the ballroom?

A. There is a Band stand there, yes.

Q. Or Band stand? A. Yes.

Q. Was that of a permanent nature? A. Yes, sir.

Q. So that when Mr. Griff Williams and the orchestra came to play at the Crystal Ballroom, they would take their station on this permanent bandstand or platform?

A. That is right.

Q. Now then you had no objection you say to Mr. Williams placing the divisions where he saw fit?

A. No, that was his business.

Q. Now did you object to the part of the contract which says "The employer shall at all times have complete control of the services of each of the employes which render to the satisfaction—"

A. I did want it—Pardon me. I deny always that I am the employer of those musicians. Mr. Williams brought his orchestra there. He hired those men.

[fol. 179] Q. But you saw that in the contract?

A. Yes.

Q. And you objected to that? A. Yes, sir.

Q. It was in response to these objections that the agent Mr. Breyley told you that you will either have to engage them under this contract, or you are not going to have any music? A. That is right.

Q. That is what he told you? A. Yes.

Q. That was all said and done before you signed the contract? A. Yes.

Q. And it was after you had this colloquy or conversation and made these objections that you signed the agreement? A. Yes, sir.

Q. Arrangement for the musicians? A. Yes.

Q. Now, you signed this agreement back on the 26th day of July, 1941. Correct? A. Yes.

Q. And the services were to be as of September 1, 1941? A. That is right.

Q. An elapse of some couple of months I dare say, bet-
[fol. 180] ter than a couple of months?

A. I would say a couple of weeks.

Q. About four or five weeks. You are right. You had four or five weeks of elapsed time intervening?

A. That is right.

Q. During that time you did not attempt to repudiate the contract, did you? A. No.

Q. And in the instance of, let us say, Buddy Fisher, there was an elapsed time from the time of the contract until you got it, after you signed it, it was signed and sent back, wasn't it?

A. Sent back from the booking agency.

Q. Then the booking agency returned it to you with some items and typewritten matter on the reverse side, is that right? A. That is right.

Q. And did you object to that typewritten matter that was displayed?

A. It was immaterial to me after I signed it what they put on it. I had nothing to do with it.

Q. As far as you were concerned, you were little concerned or took no concern of anything appearing on the reverse side?

[fol. 181] A. That is right.

Q. Now then in this contract you observed, did you not, that it was not necessary to fill out the reverse side of that particular contract, but a separate statement could be rendered to you of the names of the musicians and others, isn't that right?

A. That I don't know. I would have to read the contract back.

Q. You read it at that time, didn't you?

A. That is possible.

Q. And did you observe this in your contract? I am reading from a quotation of it, if you want to read it directly from the original one—"On behalf of the employer the leader will distribute to the men—" referring to the employes—"including the list as engaged on the opposite side of this contract, and in place thereof a separate memorandum supplied to the employer during or before the commencement of the employment herein contracted and turned over to the employer receipt therefrom from the employes including the list"—does that refresh your recollection; do you recall that appearing in the contract?

A. Yes, sir.

Q. And in the case of Buddy Fisher you actually ob-
[fol. 182] tained a return of the contract with the notation of this information on the reverse side of it before Buddy Fisher came to play?

A. There is a list of names, members on the back, but that is all that I saw.

Q. Well, but it came, I say, the contract.

A. I say names and numbers, that is all.

Q. I think that one had the salaries too, paid them, Tiny Hill had the names and numbers without the salary?

A. That is right.

Q. Buddy Fisher had the salary, isn't that right?

A. Yes, sir.

Q. You will have to answer yes or no. The reporter cannot get your nod.

A. Yes.

Q. Now then the purpose of that information was to enable you to pay social security, wasn't it?

Mr. Roberts: That is objected to as calling for an opinion and conclusion of the witness, not proper cross-examination.

The Court: Sustained. (Intervener excepts.)

Q. Well, in order to pay social security on your employes, you have to have their names and amounts they earn, don't you?

[fol. 183] Mr. Roberts: Objected to as not proper cross-examination.

The Court: Overruled. (Plaintiffs except.)

Q. You may answer, Mr. Bartels?

A. In order to pay on—I don't claim them to be my employes, I pay it on my regular employes.

Q. Let's take the regular employes. You pay social security for them, and in order to pay that you have to know the amounts, don't you?

A. Well, that's right.

Q. Have you ever tried to obtain the names and amounts of the musician who worked for you to this date?

A. To this day?

Q. Yes.

A. I have since, yes.

Q. Who did you ask?

Mr. Roberts: Objected to as incompetent, irrelevant and immaterial, not pertaining to any issue in this case, pertaining to facts that happened after anything in this case.

The Court: Overruled. (Plaintiffs except.)

Q. Who did you ask to furnish you with the names and amounts that were earned?

A. Only of the Band, the orchestra leader.

[fol. 184] Q. How did you do that?

A. By word of mouth.

Q. Did you call him on the long distance phone or did you talk to him?

A. No; it was there on the contract. I think they are on all contracts now, that the Union will give now.

Q. It is a fact, is it not, that in the first part of the Form B contract, the first few weeks it happened some times they had not put it on the back and didn't have it on the back; isn't that right?

A. Yes, sir.

Q. They are pretty careful now about putting it on the back? A. Yes.

Q. Recent days you have signed it all filled out, haven't you? A. No.

Q. Well, do you know any one in the last year that has not filled out the complete information on the reverse side?

A. Well, Tiny Hill.

Q. Well, now, isn't the reason why it is not filled out in this instance is because 60 per cent of it, they must wait un-

til the engagement is over to know whether they take the $350 or take the 60 per cent?

[fol. 185] Mr. Roberts: Objected to as calling for an opinion and conclusion of the witness.

Mr. Padway: I have no objection. If counsel objects to it, I will just withdraw the question. I wanted it shown to give the information in the record to show why it could not be even determined in advance, because an option of payment, it was either for his payment of the $350 or—they could not possibly put the amount in there, if Your Honor please, until after they knew what had been the take.

The Court: You said if he is going to object you would withdraw the question. I think it is absolutely all right if you want to withdraw it.

Mr. Padway: I am not going to show that. I am going to have a question you can answer. Let me reframe the question.

Q. This 60 per cent fee, as the court may know, was an option to the leader to take 60 per cent of the gross for that evening in preference to the amount that was stipulated, am I right?

A. All orchestras didn't get that.

Q. I know. It is only when it appears in the contract. Correct? A. Yes.

[fol. 186] Q. Now then in order to determine whether he takes the $350 or the 60 per cent, and what he would pay out to the musicians, you must wait until the take is complete?

A. I wouldn't know that.

Q. All right. That is a fair answer.

The Court: I think we are kind of imposing on the reporter. I think we better take a ten minutes recess.

Mr. Padway: Judge, I was waiting for you to say that ten minutes ago.

The Court: I tried to, but I couldn't get my mouth open.

Recess: 3:40-3:55 p. m.

The Court: As I understand it, there was not anything on the reverse side of any of these contracts?

Mr. Padway: On some there were and some there weren't. I tell you, Judge, I am asking him the question, I don't think the ruling is material one way or another.

The Court: You can approach the question from a different angle.

Mr. Padway: I will show you why—

The Court: I was not sure I got the purport of the question that was to the effect whether or not he was ob-
[fol. 187] jecting to paying that tax, why that might have been all right.

Mr. Padway: Let me state to the court, the reason I was bringing this out was in the early part of the use of these contracts they just failed to put it on the reverse side, that is, the ministerial act. It is our contention, he would not make any—he could not find out previous to the time. If he knows what it is already, he can write to a person and the Government will take his money.

The Court: I don't care about the argument.

Mr. Padway: I will put the question again in this form.

Q. What did you believe the information to be, set forth on the reverse side of the contract, or any separate memorandum that is to be furnished to you, that is pretty bad English, but—

Mr. Charlton: That is objected to as incompetent, irrelevant and immaterial, not proper cross-examination, and directed to the present time which is immaterial.

Mr. Padway: No, not in these contracts. I will fix the time.

Mr. Charlton: His present belief is what your question calls for.

[fol. 188] Q. What did you think at the time you signed the Griff Williams' contract? Read it. It requires information to be given to you on the reverse side of the memorandum. What is the purpose of that information?

A. Griff Williams didn't give me any information.

Q. But you knew that the contract called for it, didn't you? A. Yes.

Q. In fact you did see it on the Buddy Fisher contract?
A. Yes.

Q. And you saw a part of the information on the Tiny Hill contract? A. Yes.

Q. When you saw that was it not your belief that the purpose of the information was to give you what amount had been paid out by way of services, payment for services of these men so that you in turn could pay your tax to the Government?

A. That I would not know what it was for on the back. I didn't put it on there.

Mr. Padway: Well, if the court please, that repeats my question and it has been answered. That is all.

[fol. 189] Redirect Examination.

By Mr. Roberts:

Q. Mr. Bartels, you have testified on cross-examination that you protested the form of this contract, that is, the Williams' contract for the engagement of September 1, 1941, that was to Mr. Breyley?

A. I did.

Q. Just what was it you said to Mr. Breyley?

A. I objected to the signing of this where they called me the employer, and Breyley says, "Go ahead and sign it", he said, "it is just a change that has been requested by Petrillo, and", he says, "it will give you no more power now than it was before". He said, "It won't change your status a bit."

Mr. Padway: Objected to as incompetent, irrelevant and immaterial, tending to vary the terms of a written instrument, and is incompetent.

Mr. Charlton: Merely stating the entire conversation at the time of the objections which were shown in cross-examination.

Mr. Cohen: If the court please, I would like to object on the same ground, it seems to me it is incompetent to have oral testimony as to the negotiations which proceeded or were concerned with the signing of the contract. This is [fol. 190] the contract and is not subject to any testimony of parol evidence.

The Court: I will take it subject to the objection. It is my understanding it is particularly when a third party attacks a contract, between the parties you may be right, but this is a different situation and we will have to hear the evidence.

Q. Now Griff Williams was at the Crystal Ballroom on the occasion of each of these engagements?

A. That's right.

Q. And he had the same style of music on each occasion?

A. He did.

Q. And you were not interested in the identity of the side men so long as they produced the music that they wanted?

A. I bought Griff Williams and his orchestra. The side men made no difference to me, they were his men.

Mr. Roberts: That is all.

Witness excused.

The Court: I guess you are excused. Call your next.

Mr. Padway: I would like to go into that a little bit.

The Court: All right. You mean into this last answer? [fol. 191] Yes, I think that is proper. It seems to me you have a right to show what the oral contract was between the parties as affecting the rights where a third party is attacking it.

Recross Examination.

By Mr. Padway:

Q. On cross-examination before the recess you said Mr. Breyley told you that you couldn't have the orchestra unless you agreed to this contract?

A. That is right.

Q. And you have told us that you have made certain objections to the contract? A. That is right.

Q. The only objections was that you didn't want to be designated employer, is that right?

A. Yes, I objected to being called the employer and signing of that contract.

Q. You said another objection was that you did not want to assume control, did not like the clause in there that said you were to assume control?

A. That is right.

Q. You say you discussed that with Mr. Breyley?
A. That's right.
Q. Mr. Breyley told you Mr. Petrillo, who, by the way, [fol. 192] you know to be president of the American Federation of Musicians insisted on this form of contract, didn't he? A. That is right.
Q. He told you those were the rules of the Union, didn't he? A. Well, he may not have told only —
Q. I think you said that in response to a question of Mr. Roberts after recess.

Mr. Charlton: That is objected to as assuming facts contrary to the record, contrary to the testimony of the plaintiffs.

Mr. Padway: If it isn't the fact he can say so.

Q. Do I understand you to say that was one of the things the Union demanded?
A. I think I said there was [redacted]ause —

The Court: Now let this witness answer. You both jump in before he has a chance. Go ahead and answer.

A. I think I — I don't know just exactly the words I said. He said Mr. Petrillo requested that in the contract.
Q. And you knew at that time that Mr. Petrillo was President of the American Federation of Musicians?
A. Yes, sir.
Q. And you knew too that the members including the side men and leader who were to play under this contract were members of the American Federation of Musicians, didn't you?
[fol. 193] A. Yes, sir.
Q. You knew that the rules and regulations of the American Federation of Musicians were binding upon you, didn't you?
A. I also knew they were binding on the orchestra leader because anything — the Musicians Union, he is the employer as much as I am. I also — Just a minute now. You asked me a question. I also knew that the acts and performance of these men would not be changed by this contract. I also knew that this contract was drawn up by some slick lawyers trying to avoid this tax question and pin it on to me.

Mr. Padway: I object to the answer as incompetent and I move to strike it as not responsive.

The Court: Overruled. (Intervener excepts).

Q. Did you know that the rules of the American Federation of Musicians were binding on you?

A. They were binding on me and also on the orchestra leader.

Q. Now did you not read in this contract, this language: "It is agreed that all of the rules, laws and regulations of the American Federation of Musicians, and all of the rules, laws and regulations of the Local in whose jurisdiction the musicians perform in so far as they are not in conflict with those of the Federation, are made a part of this contract." [fol. 194] Did you read that in the agreement at that time? A. Is that in the contract?

Q. Yes. A. I imagine I did.

Q. If you read it you knew it was there, didn't you?

A. Yes, I did.

Q. Wait a minute now. Well, I don't want to interrupt you. Do you want to say anything else?

A. No, I will let it go.

Q. You knew from Mr. Breyley that President Petrillo of the American Federation of Musicians had demanded these rules? A. This new contract.

Q. Yes, this new contract with all that was contained in there, you knew that, didn't you? A. That is right.

Q. And you exercised your objection to it?

A. Yes.

Q. Now you felt you could not employ these men unless you signed this contract?

Mr. Padway: That is all.

[fol. 195] Recross Examination.

By Mr. Cohen:

Q. Mr. Bartels, am I correct that the first time you made the objections was to Mr. Breyley on the Griff Williams' contract?

A. That's right. The contract at that time had just come out.

Q. Now I show you plaintiffs' Exhibit W, and ask you when that was executed?

A. That was executed on June 25, 1941.

Q. That was previous to that time, wasn't it?

A. That is right.

Q. So that you knew that there was this form of contract as early as June 25th?

A. That is not a Form B contract. I don't see any B on there, do you?

Q. Now, Mr. Bartels, doesn't this contract, plaintiffs' Exhibit W purport to state, does it not state that you are the employer and that you shall at all times have complete control of the services of the side men and the leader?

A. Yes.

Q. Now did you object to that?

A. I imagine I did.

[fol. 196]. Q. To whom did you object to that?

A. I think I crossed off a good many of those kind.

Q. You didn't cross off this one?

A. It didn't do any good, you either sign the contract or didn't get this man.

Q. I see. So that you did sign this contract on June 25, 1941, isn't that correct?

A. I imagine I may have.

Q. Well, did you object to the contract because you thought it was changing the status?

A. Changing the status how?

Q. That it made you the employer of these side men?

A. That's right.

Q. And yet you signed the contract, isn't that right?

A. I had to to stay in business.

Q. Well now you didn't believe that the contract was insignificant, that it didn't make any change in the status, is that right?

A. No, because the By-Laws of your Union say that the orchestra leader is the employer of the side men, and that makes him as much employer as these here paragraphs you put in on me.

Q. Now let me ask you, Mr. Bartels, am I correct that you objected to signing this contract because you thought [fol. 197] it changed the status? A. Yes.

Q. Now did you continue to think it changed your status and your relation to the musicians? A. I still do.

Q. And you did all the time, is that correct?

A. That's right.

Q. So that the assurance of Mr. Breyley didn't mean anything to you, is that correct?

A. I either signed or I didn't get the orchestra.

Q. In other words, you didn't believe Mr. Breyley when he said it didn't make any difference and your status remained the same. Am I right about that?

A. Yes, I took Jim's word for it.

Q. Did you believe it did not change the status or did you believe that it did change the status?

A. Oh, I didn't believe it did, no.

Q. Well, did you believe it did not change the status, why did you object to it, if you believed that?

A. Because I didn't want to be called the employer.

Q. Did Mr. — did anyone from the Vic Schroeder Agency tell you that the status was not changed?

A. No, I believe not.

Q. Well, at that time did you believe that the status was [fol. 198] changed so that you became the employer of these musicians?

Mr. Charlton: That is objected to as repetition, having been asked and answered exactly in the same form.

The Court: Well, I think it has, but we will take it once more and then we will quit.

(Question read by the reporter.)

Q. In other words, I am referring to the contract for the services of Paul Moorhead and his orchestra.

A. I will have to answer the same way, I have never contended that I am the employer of these divisions, these side men.

The Court: That is not exactly what he asked you.

Mr. Cohen: You answer my question, please.

(Question read by the reporter.)

A. You want me to answer whether my status had changed?

Q. I want to know whether on June 25, 1941, when you signed the contract engaging the services of Paul Moorhead and his orchestra you understood that the terms of the contract were such that you assumed the obligations of an employer to the side men and the leader of your orchestra.

A. I never have.

Q. Answer the question.

[fol. 199] A. No.

J. You didn't believe that? A. No.

Q. Well, did you object to signing that contract?

A. Yes.

Q. To whom did you object to signing that contract?

Mr. Charlton: Objected to as having been already asked and answered.

The Court: Sustained. (Defendants except).

Mr. Cohen: I am referring, if the court please, I am referring to the contract of June 15th.

The Court: Well, it has been — oh, you are referring to a different contract?

Mr. Cohen: Plaintiffs' Exhibit W.

Mr. Charlton: I think you will find that he —

The Court: Yes, I guess he has. You can answer. That is the other contract, the one that precedes the one you said you were raising the objection to.

A. Which one is it now?

Q. Paul Moorhead.

The Court: The one you said you didn't think was a B contract.

Mr. Cohen: That's right.

A. Yes, I objected to signing that.

[fol. 200] Q. To whom did you object to that?

A. I imagine it would be some one in Vic Schroeder's office, possibly Vic himself.

Q. When you signed that on June 25, 1941,—

A. That's right.

Q. Then you continued to sign contracts on July 7, 1941, on September 25, 1941, as well as July 12, 1941 and November 6, 1941, each with the same clause, is that correct?

A. Well, I think they are different contracts. I signed them, yes, I signed them.

Q. You signed them all?

A. But not as employer. I signed them because they insisted, I signed them but I denied I was the employer.

Q. We know you denied it, but you signed the contract?
A. Yes.

Mr. Padway: The answer that he denied he was the employer, we object to as incompetent, irrelevant and immaterial, and calls for a legal conclusion.

Mr. Cohen: I think I should object to that on the ground it is not responsive.

The Court: I think that is exactly what you asked him. It is too late now, we will let it stand. I think he has made the same statement several times.

[fol. 201] (Intervener and defendants except).

Recross Examination.

By Mr. Padway:

Q. Mr. Bartels, that conversation you had with Breyley about Petrillo and the adoption of this contract and the rules and all was had on the—

A. On what day. You say it was had by long distance telephone before the 26th of July, 1941, was the date you signed the contract.

Q. Was that the—

The Court: Which one are you talking about?

Mr. Padway: I am now talking about the Griff Williams contract, the first contract.

The Court: You went all over that a while ago.

Mr. Padway: Just a preliminary question.

Q. Directing his attention to that conversation, when was the conversation had?

A. It would be some time before I signed it. I don't know just what day.

Q. You don't claim to have had some conversation in connection with the Buddy Fisher contract?

A. When was that contract?

Q. That contract was signed on the 6th of November—no, no. I beg your pardon. Yes, 6th of November, 1941.

[fol. 202] A. Oh, I think I testified it wouldn't do any good. We would have signed this or we didn't get the man.

Q. So that you didn't raise that question then?

A. No.

Q. You didn't raise it on the 12th of July, 1941, Bill Carlsen, you didn't raise it then?

A. I may have raised it, but I know it was not as serious as the first one.

Q. You say you may have raised it. I don't mean raising an objection, did you have any conversation with the agent in which he said it doesn't make any difference?

A. No.

Q. And you didn't have any such conversation with the contract of Buddy Fisher? A. No.

Q. With that agency. You didn't have any such conversation with the Boyd Raeburn contract, did you?

A. No.

Q. And you didn't have any such conversation with Paul Moorhead contract, is that correct?

A. I may have had one of them.

Q. Well, you may have. Do you know whether you did?

A. I don't recall it right now.

Q. So that the only conversation you recall of any con- [fol. 203] versation and as related by you without going over it, is with respect to the Griff Williams contract?

A. That's right.

Q. That's right, isn't it? A. That's right.

Mr. Padway: That's all.

Redirect Examination.

By Mr. Roberts:

Q. I will ask you, Mr. Bartels, if you didn't on other occasions during this same period, during July and August have conversations with these other booking agencies protesting to the form? A. I did.

Q. And what did they tell you as to whether you could secure the Band?

Mr. Padway: Objected to, first of all it is a collective question pertaining to several contract forms.

The Court: I think you are right about that. Sustained. You will have to specify if you want to go into that. (Plaintiffs except).

Q. Now did Mr. Breyley tell you on the occasion of this conversation that we have been inquiring about, that you could not employ these men, was it that you could not sign, could not get the Band, just what was his response? [fol. 204] A. He said I couldn't get the Band without signing this contract.

Q. If you answered on cross-examination that the word employ—a question in which you used the word "employ," did you understand that is what Mr. Breyley said? I will withdraw that. Nothing more.

Mr. Cohen: I have no further questions.

Mr. Padway: No further questions.

Witness excused.

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The Court: The reporter and I had a meeting and we decided to stop early this afternoon for our own reasons, and we will adjourn at 4:30.

Mr. Roberts: This witness, with permission of Government's counsel, is being called in the Geer case which is a combination case.

The Court: That is all right.

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[fol. 205] AL MENKE, called as a witness on the part of the plaintiffs, and being first duly sworn by the Clerk, testified as follows:

Mr. Charlton: The record will be indistinguishable in any material or substantial way in the two cases. It is unfortunate we ~~have to call a~~ lot of witnesses and make a lot of record which will be virtually identical in the two cases, but I don't know whether there is any way to avoid it or not.

Mr. Cohen: I merely mentioned whether the testimony of this witness could be bodily taken out and put in again in the Geer case, so that all of the Bartels' testimony will follow along subsequently.

The Court: I understood from counsel that there was an agreement that this man's testimony might be taken out of order.

Mr. Cohen: That is true, but I thought after it was taken the reporter could then take it out.

The Court: Oh, well, that is between you and the reporter.

Mr. Cohen: Well, just intermingle them—

The Court: All right, proceed, please.

[fol. 206] Direct Examination.

By Mr. Roberts:

Q. Will you give your name to the reporter?
A. Al Menke.
Q. Where do you live, Mr. Menke?
A. Fairmont, Minnesota.
Q. Did you come here in response to a subpoena?
A. Yes.
Q. What business were you in during the year 1942?
A. Owner of a dance band, or orchestra.
Q. That was an orchestra identified as Al Menke and his Orchestra? A. And his orchestra, yes.
Q. Who first assembled the orchestra? A. I did.
Q. When was that? A. 1914.
Q. Can you tell us the place? A. Bancroft, Iowa.
Q. Have you continued to own and operate that orchestra since that time all down to 1942?

Mr. Cohen: Now, if the court please, I want to object with regard to ownership, which is a legal term and calls therefor for a legal conclusion.

[fol. 207] The Court: Overruled. (Defendant excepts).

(Question read by the reporter.)

A. Yes.
Q. When was the orchestra first known as Al Menke and his Orchestra? A. 1914.
Q. It has been continuously known by that name ever since? A. Yes.
Q. Now during that period of time that orchestra has been in existence, its performances have consisted mostly of playing of popular dance music? A. Yes.

Q. Just tell the court what types of establishments and organizations that your orchestra has played for in the years it has been in existence?

A. Oh, ballrooms, hotels, theatres, and so forth, cafes.

Q. What about colleges and High School classes?

A. Yes, private dances, Legion dances.

Q. Elks Clubs? A. Yes.

Q. In what part of the country has your orchestra played these engagements?

A. Oh, Minnesota, Iowa, Wisconsin, South Dakota, Colorado.

Q. Has the orchestra ever played over the radio?

A. Yes.

[fol. 208] Q. Now do you recall supplying some engagements for the Larry Geer Ballroom during the year 1942?

A. Yes.

Q. I will hand you what the court reporter has marked Exhibit A and ask you to examine that document and tell the court if your signature appears thereon? A. Yes.

Q. Is that a contract for an engagement by your orchestra at the Laramar Ballroom, Fort Dodge, Iowa?

A. Yes.

Q. On Thursday, November 26, 1942? A. Yes.

Q. The date of that contract is November 23, 1942?

A. Yes.

Q. Handing you what the reporter has marked Exhibit B, I will ask you to examine that contract and tell the court if your signature appears any place thereon?

A. Yes.

Q. And is that contract dated October 7, 1941, for engagements on the dates of October 12, October 18, and November 8th of 1941? A. Yes.

Q. Did you prepare the printed form of either contract Exhibit A or the contract Exhibit B?

[fol. 209] A. Yes.

Q. I mean did you prepare the printed form?

A. Not the printed form. This is the Form B contract I got from the Union, but I made the fill-in.

Q. When did you first start using the form contained in each one of these contracts, can you tell the court that?

A. Oh, in the summer I would say of 1941.

Q. Can you tell the court how you started to use that Form B contract and how you happened to start using it?

A. Oh, if I remember right the old forms were called in and new ones sent out.

Q. Who did that?

A. I got them through my local secretary at Mankado.

Q. Local secretary of what?

A. Local Musicians Union.

Q. Local Musicians of course of the American Federation of Musicians? A. Yes.

Q. Will you just tell the court in a general way how these engagements were made with Mr. Geer, the engagements that you had?

A. I either called him by long distance telephone or sent him letters, correspondence, telling him what dates I had open and what I would like to play for him.

[fol. 210] Q. I will hand you what the reporter has marked Exhibit C and ask you if that is the letter dated November 23, 1942, Mr. Larry Geer, Fort Dodge, Iowa, signed by you?

A. Yes.

Q. And that letter has to do with the closing of the contract for the engagement of November 26th?

A. Yes.

Q. And at the Laramar Ballroom?

A. Yes.

Q. That is the engagement mentioned in the contract Exhibit A?

A. Yes.

Q. Had you ever played the engagement for the Geers prior to the four specified in the contract?

A. Yes.

Q. How many years had your orchestra been playing in the Geer Ballroom?

A. Oh, I would not say. I would say for fifteen or sixteen years.

Q. Were you always the owner that played for the Geers? A. Yes.

Q. And prior to the use of the Form B contract, you used various form contracts, is that right?

[fol. 211] A. Yes.

The Court: I am sorry that we cannot get down with this witness—

Mr. Padway: Would counsel be kind enough, we made arrangements to go home tomorrow. How many witnesses

you have got, and just about what time it would take to put in your case; what does Your Honor plan as to the hours?

The Court: Start at 9:30 and 2:00 to 5:00.

Mr. Roberts: I believe we can get our evidence in tomorrow, but I don't know about the arguments.

Mr. Padway: We won't have very many witnesses and I don't believe we will have more than one and a stingy one at that.

The Court: Well, we will take whatever time we need. I am sorry we cannot go into a contract with you, but this is a good town. We will adjourn now until 9:30 tomorrow morning. (4:30 p. m.)

---

[fol. 212] Morning Session, December 12, 1944,

9:30 A. M.

Mr. Padway: If the court please, would it be well now to ask your Honor what procedure you have in mind in respect to this case? In the first place, this witness testified as a witness in the Geer case; is that correct?

Mr. Robert: That is correct.

Mr. Padway: And the witness will not appear in the Williams and other cases?

Mr. Roberts: That is right.

The Court: Then I understand that the evidence taken in one of these cases shall not be applicable to the other case at all? Is that the agreement of counsel?

Mr. Padway: The evidence taken in the Geer case shall not be applicable to any other case.

The Court: Generally when we try consolidated cases the evidence applicable to both cases is to be so considered by the court. I understand that is not the understanding in this matter?

Mr. Charlton: There is no such agreement. I think Mr. Padway, not being of record in the Geer case, and not hav-

ing intervened, but being of record in the Bartels case has no interest in the Geer case as such. But the causes having [fol. 213] been consolidated, all relevant evidence in both cases should be considered by the court, and we do not intend to waive that proposition.

Mr. Padway: Now the evidence in the Geer case is another case, and our understanding is what has been done in the Geer case and what becomes a part of the record has no bearing on the Bartels case any more than the Bartels case has any bearing on the other case.

The Court: I never tried a case of that kind. There would not be any advantage in consolidation unless the evidence is applicable to both cases, and that it shall be so considered by the court if it is competent. Generally in consolidating cases we make the order that all evidence applicable and competent in the hearing at all shall be considered by the court in all the cases. Of course, it [in] more or less a matter of agreement between counsel.

Mr. Padway: I was under the impression that the testimony taken would not become a part of the record in the Bartels case—the testimony in the Geer case.

Mr. Roberts: My [understand] from what we talked last night was if the evidence was relevant and competent [fol. 214] in both cases it should be considered by the court.

Mr. Padway: If that is the situation would I be permitted to cross-examine this witness because he then becomes a witness in the Bartels case, and if that evidence is to be considered in the Bartels case we ought to have an opportunity to cross-examine him.

The Court: That is reasonable.

Mr. Padway: Suppose we go on as Your Honor wants it to go on, and then we can get together and decide what we want to do. If we cannot agree then whatever the court rules on it is all right.

Mr. Charlton: That is all right.

The Court: I don't care. If you want to try one case at a time it makes no difference to me, but the very purpose of consolidation is to save time.

Mr. Padway: After the Bartels case is finished, then we can have a short argument, and we can pick up our grips and go. We were going to ask an opportunity of the court to present briefs. I am not going to take any great length of time. The reason that we are doing that is that the $20.00 involved in this case is not material for the reason that it [fol. 215] may develop into millions instead of $20.00.

The Court: There will be no trouble about that. We will go ahead with this witness, and if there is any matter in his evidence that you want to cross-examine on, of course, you will have that right. As bearing upon your case, if you want to develop it, I will give you plenty of opportunity to do that.

Al Menke, being recalled as a witness on behalf of the plaintiffs, testified as follows:

Direct Examination.

By Mr. Thomas B. Roberts:

Q. Mr. Menke, I believe you testified yesterday afternoon that your orchestra played engagements at the Larry Geer ballroom in Ft. Dodge on October 12th and 18th, and November 8th and 26th, 1941; and also an engagement on November 26th, 1942; is that correct?

A. Yes.

Q. State whether or not your orchestra in playing those engagements had any particular style of music?

A. Well, we had a decided style for dance purposes in the Laramar Ballroom that we tried to keep.

Q. Now in order to produce that style what, if anything, did you do?

[fol. 216] A. I hired a leader and sidemen to play what I wanted.

Q. Anything else?

A. Buy music to serve that purpose and arrangement with orchestras that were necessary to produce the desired result.

Q. That being the particular style of music that your orchestra played on those occasions, is that right?

A. Yes.

Q. What can you tell us as to whether you held rehearsals for that purpose?

A. You mean for those jobs only or in general?

Q. In general?
A. Yes, we held regular rehearsals.
Q. That would be in advance of this engagement?
A. Yes, sir.
Q. You mentioned hiring the sidemen and the leader. From that I gather that you did not lead your orchestra; is that right?
A. No.
Q. You hired somebody to do that?
A. Yes.
Q. Now how long in advance of these engagements did you hire the sidemen and the leader?
A. Well, it all depends. Some men for a number of years, and others not so long.
[fol. 217] Q. Can you tell us the names of any men that you had for sometime prior to these engagements?
A. I had Carl Orser for 16 years.
Q. He has been with you 16 years?
A. Sixteen years.
Q. You hired him in the first instance?
A. Yes.
Q. Anyone else?
A. Paul Hostetler.
Q. How long had he been with you?
A. Sixteen years.
Q. Anyone else you recall?
A. I hired Johnnie Glazer as leader at that time.
Q. How long had he been with you?
A. About five years.
Q. Now at the time you hired these various men, did you have any conversation with them?
A. Well, other than to tell them that they were to play what I wanted, no.
Q. Anything discussed about their pay?
A. Yes.
Q. Did you tell them what you would pay them?
A. Yes.
Q. Who determined the number of men in the orchestra?
A. I did.
[fol. 218] Q. Now, I presume over a period of years I think you testified yesterday your orchestra had been in existence since 1914; is that correct?
A. Yes.

Q. You sometimes had occasion to get rid of a man?
A. Yes.
Q. Who told the man to leave the orchestra?
A. I would.
Q. In other words, you discharged him?
A. Yes.
Q. Some man wanting to leave the orchestra, would he come to you?
A. Yes.
Q. He would tell you that he wanted to leave the orchestra? A. Yes.
Q. Now you mentioned something about picking the library, or picking the arrangement, did you have a music library for your orchestra? A. Yes.
Q. Who picked out the pieces in that library?
A. I did.
Q. Who paid for those pieces? A. I did.
Q. What can you tell the court as to whether that library contained arrangements of various popular parts of [fol. 219] dance pieces?
A. Yes, dance numbers, yes.
Q. Did you ever request anyone to make arrangements for your orchestra? A. Yes.
Q. And then you paid them, of course, for their services?
A. Yes.
Q. Are you a musician yourself, Mr. Menke?
A. Yes.
Q. What instrument do you play? A. Saxophone.
Q. During the period of time your orchestra was in existence did you play with the orchestra part of the time, some of the time?
A. Some of the time, yes.
Q. Now you mentioned something about the instrumentation; can you tell us about that; who determined that?
A. I did.
Q. Tell the court what you mean by determining the instrumentation?
A. Well, to have the band that I wanted I would try to get certain instrumentation, such as five saxophones or four brass, or whatever I would want and try to keep my men within the number of men listed on the contract, of course, and I would have to have my instrumentation come

[fol. 220] out with that so I would have as many men as the contract called for.

Q. Did the orchestra have a theme song? A. Yes.

Q. Who selected that? A. I did.

Q. Can you tell whether that was played at the beginning of an engagement? A. Well, usually.

Q. Usually was? A. Yes.

Q. That was true in '41 and '42? A. Yes.

Q. Incidentally, did you have any slogan for your orchestra? A. Yes.

Q. What was that slogan?

A. "Band of a Million Friends."

Q. Was that used in the advertising? A. Yes.

Q. Did you send advertising of some kind to the different establishments in the territory that your band played in? A. Yes.

Q. Who paid for that advertising? A. I did.

[fol. 221] Q. That would be placards, pictures and circulars? A. Yes.

Q. Did you have any feature performers with your orchestra?

A. I usually had one or two vocalists, or drummer.

Q. Did you have any such performers in 1941 and '42?

A. Yes.

Q. Who selected them? A. I did.

Q. Who worked them into the orchestra, that is their place?

A. I did through the arrangements.

Q. Through the arrangements? A. Yes.

Q. Would you and the leader confer together as to how they would take their vocal chords, etc? A. Yes.

Q. You mentioned something about rehearsal; who determined the time of that rehearsal?

A. I, or the leader.

Q. And if the leader did under whose direction was he acting? A. Mine.

Q. As a matter of fact in his conducting of the orchestra whose direction was he under? A. Under mine.

Q. During these rehearsals would you make suggestions [fol. 222] as to what the orchestra was doing? A. Yes.

Q. Criticize them when playing the pieces? A. Yes.

Q. And try to work out harmonies and chords?

A. Yes.

Q. That was true during 1941 and 1942? A. Yes.

Q. What can you tell us whether your orchestra used any music racks during this playing at the Laramar Ballroom during 1941 and 1942? A. Yes.

Q. Who furnished those? A. I did.

Q. What can you tell the court whether the orchestra used a public address system on the occasion of each of those engagements? A. Yes, we did.

Q. Who furnished that? A. I did.

Q. Now did your orchestra members and the leader wear any particular attire on the occasion of each of those engagements? A. Yes.

Q. Who selected that attire?

[fol. 223] A. I usually did.

Q. Now what, if anything, did the orchestra travel in? I believe you said your headquarters was Fairmont, Minnesota? A. Yes.

Q. How did you travel to go to Ft. Dodge, Iowa, for these engagements we have inquired about?

A. We had our own orchestra bus.

Q. Who bought that bus? A. I did.

Q. In whose name was it registered? A. In my name.

Q. What can you tell us as to whether you had liability insurance on your bus? A. Yes.

Q. Who paid for that? A. I did.

Q. What can you tell the court as to whether you had your name on it? A. Yes.

Q. In large letters? A. Large letters, yes.

Q. Just what did they state?

A. "Al Menke and His Orchestra."

Q. Who paid for the gas and oil and tires used in these [fol. 224] engagements? A. I did.

Q. And who paid for the repairs? A. I did.

Q. You charged that up to the expense of the orchestra, did you? A. Yes.

Q. Now you received some money for each of these engagements; is that correct? A. Yes.

Q. Can you tell the court the amount you received?

A. Received $250.00 for November 26th, and $120.00—

Q. What year?

A. 1942. And $120.00 for each engagement of October 12, October 18, November 8th and 26th, all in 1941.

Q. To whom was that money paid? A. To me.

Q. That is you were the one that ultimately received it? A. Yes.

Q. Did you put it in some bank account? A. Yes.

Q. The account carried in your name? A. Yes.

Q. Now you mentioned earlier in your examination that you discussed the pay with the sidemen as to how you [fol. 225] paid your sidemen and the leader? A. How?

Q. Did you pay them by the week or day?

A. By the week.

Q. By the week? A. By the week, yes.

Q. Some weeks did you have off nights when the orchestra did not play? A. Yes.

Q. What can you tell the court whether you deducted anything from the wage of the sidemen?

A. Never, not for off nights.

Q. What can you tell the court as to whether that weekly wage that you paid the sidemen and the leader was higher or lower than the union scale throughout the territory?

A. Always higher.

Q. You always paid higher than the union scale?

A. Yes.

Q. What can you tell the court whether you paid the leader more than the sidemen? A. Yes.

Q. That was because he had to know more, is that right?

A. Yes, and had more responsibility.

Q. In handling the men? A. Yes.

[fol. 226] Q. Did you pay all of your sidemen the same amount? A. No.

Q. Tell the court about that?

A. Well, I will pay the first saxophone man, and first drum man more than I would the second or third man, if that is what you mean.

Q. Would you give them a raise from time to time?

A. The longer they would be with me the more I would give them a raise.

Q. What was the custom to pay these sidemen and the leader? A. Check.

Q. Check made to each man? A. Yes.

Q. That would be for the amount you had agreed to pay them? A. Yes.

Q. All of this was true during 1941 and 1942?

A. Yes.

Q. Did you have a payroll? A. Yes.
Q. You made up that payroll each week? A. Yes.
Q. During 1941 and 1942? A. Yes.
Q. Now what can you tell us as to whether you paid unemployment compensation tax to the State of Minnesota [fol. 227] during the years 1941 and 1942 on the sums of money you paid the sidemen and the leader? A. Yes.
Q. What can you tell us as to whether you build up a merit rating under their law? A. Yes.
Q. Tell the [about] about that?
A. In Minnesota, I don't know if they have it in Iowa or other State, but in Minnesota we have a merit rating system that the employer will have a merit rating after building up to a certain percent and my present rating is as low as you can get it.
Q. You build that up—
A. As soon as you become an employer.
Q. Do you recall when you first became an employer up there?

Mr. Cohen: We object to that as incompetent and immaterial to any issue in this case as to what the State of Minnesota considers an employer. The only question here is whether he was covered under the federal law.

The Court: We will take it subject to the objection. (Defendant excepts).

A. Under the Minnesota State law—when?
Q. Yes?
A. Whenever it went into effect during the year.
[fol. 228] Q. Prior to 1941 and 1942? A. Yes.
Q. What can you tell the court as to whether during 1941 and 1942 you paid social security taxes to the United State Government of United States Treasury on the sums you paid your sidemen and the leader? A. Yes.
Q. That was true on the wages you paid these men during the weeks in which these engagements inquired about were played, is that right? A. Yes.
Q. Now what can you tell the court after paying sidemen and the leader and the traveling expense and your bus expense was there any money remaining from the sum you received as the contract price for the engagements specified in Exhibits A and B?

A. That depends entirely on how many nights we worked that week, which I would not recall unless I looked up my record. I paid by the week and if I did not work I probably would not have a profit, and then if I worked seven nights I would have a profit.

Q. If you had a profit who received that?

A. I did.

Q. The sidemen did not receive any of that, did they?

A. No.

[fol. 229] Q. Suppose during the week you had a loss. Were there times you had a loss? A. Yes.

Q. Who stood those losses? A. I did.

Q. You still paid the sidemen, and their expenses?

A. Yes.

Q. What can you tell the court as to whether you included the profit from the week's engagement in your federal income tax? A. Yes.

Q. What can you tell the court as to whether you took deduction as pay roll expense the amount you paid the sidemen and the leader? A. Yes.

Q. In our federal income tax return? A. Yes.

Q. That was true during 1941 and 1942?

A. Yes.

Q. Now you mentioned paying social security tax, did you pay social security tax on the week y salary or on the amount shown on the reverse side of Exhibit B?

A. I paid the social security tax on the weekly salary.

Q. Now, Mr. Menke, you have testified that you paid the men, or you made no deduction from their salaries if [fol. 230] they had an off night. Did you ever pay a man during the time he was laid up from an accident?

A. Yes.

Q. Tell the court about that?

A. Well, it was not in 1941 or 1942.

Q. Tell the court when it was?

A. Well, we had an accident in 1936 when a man had a broken leg and was laid up from February until July.

Q. Whereabouts? A. Rochester, Minnesota.

Q. Did you pay him during the period he was laid up?

A. Yes.

Q. Did you pay anything else?

A. Paid his salary and expenses.

Q. What did his expenses amount to?

A. $3000.00.

Q. You paid his hospital and doctors bill or expenses?

A. Yes.

Q. Were you during 1941 and 1942 a member in good standing of the American Federation of Musicians, and were all of your orchestra members in good standing in the American Federation of Musicians during the years 1941 and 1942? A. Yes.

Q. Was that true also of the leader, Mr. Glazer?

[fol. 231] A. Yes.

Q. What difference was there, if any, between the way your orchestra was operated before June 1, 1941, and the way it was operated afterward? A. None.

Q. What differences were there in your manner of dealiny with the Geers prior to June 1, 1941, and afterward?

A. None whatsoever.

Q. You operated just the same? A. Yes.

Q. The only difference is you had a different form of contract; is that right? A. Yes.

Q. Some time after the middle of 1941? A. Yes.

Q. What can you tell the court as to whether or not during the years 1941 and 1942 you permitted an establishment owner to direct or instruct the sidemen of your orchestra? A. Will you repeat that?

Q. (Question read by the reporter).

A. No, they did not.

Q. You did not permit that?

A. I did not permit that, no.

Q. Did you permit establishment owners during those

[fol. 232] years to determine the instrumentation or arrangement? A. No.

Q. What table or style of music? A. No.

Q. Did you permit them to determine your weekly salaries that you paid your sidemen? A. No.

Q. Did you permit them to hire or fire the sidemen?

A. No.

Q. That is, the establishment owners for whom you played in 1941 and 1942? A. No, I did not.

Q. I believe you testified yesterday that your signature appears on Exhibits A and B? A. Yes.

Q. And also on Exhibit C? A. Yes.

Mr. Roberts: Plaintiffs at this time offer in evidence Exhibit A.

The Court: Any objection?

Mr. Roberts: And Exhibits B and C.

The Court: No objection. They may be admitted.

# Contract Blank

# AMERICAN FEDERATION OF MUSICIANS

FILED

DEC 1 2 1942

Local No. 477

THIS CONTRACT for the personal services of musicians, made this 23rd. day of November, 1942

between the undersigned employer (hereinafter called the employer) and 13 (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of Al Lenke, according to the following terms and conditions:

Name and Address of Place of Engagement: Laramar Ballroom Ft. Dodge, Iowa

Date(s) of Employment: Thursday Nov. 26th. 1942

Hours of Employment: 9 PM to

PRICE AGREED UPON: 250.00

To be paid: after engagement (Terms and Amount)

(Specify When Payments Are To Be Made)

Filed in U. S.

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Larry Geer

Street Address Fort Collins Colo

City or State

Phone

Accepted by Employer Larry Geer

Accepted Al Menke
(Orchestra Leader)

By Al Menke
(Representative of Employees)

FORM B
Printed in U.S.A.

| NAMES OF EMPLOYEES | LOCAL NUMBER | S. S. NUMBER | WAGES |
|---|---|---|---|
| Al Menke (Leader) | 477 | 477-20-0707 | $ |
| Johnny Glaser | " | 470-03-1542 | |
| Larry Glaser | " | 470-05-1995 | |
| Karl Orser | " | 470-10-3277 | |
| Paul Hostetler | " | 470-10-4579 | |
| Richard Steele | " | 284-12-1750 | |
| Jimmy Gilbert | " | 483-16-8028 | |
| Robert Bissell | " | 474-12-7788 | |
| Gene Duermeier | " | 507-16-0506 | |
| Dale Anderson | " | 480-18-1085 | |
| Dick McNally | " | 428-12-6339 | |
| Kenny Kazebier | | | |
| Ray Long | 477 | 185-14-7374 | |

travel from Fairmont
distance of 100 miles

Plaintiffs' Exhibit A.
Filed in U. S. District Court December 13, 1944.

# Contract Blank

FILED

DEC 13 1944

N. F. Reed
CLERK

# AMERICAN FEDERATION OF MUSICIANS

**Local No.** 477

THIS CONTRACT for the personal services of musicians, made this 7th. day of October, 1941,

between the undersigned employer (hereinafter called the employer) and 12 (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of Johnny Glaser, according to the following terms and conditions:

Name and Address of Place of Engagement: Laramar Ballroom Fort Dodge, Iowa

Date(s) of Employment: Oct. 12th. Oct. 18th. and Nov. 8th. all 1941

Hours of Employment: 9 P.M. to 12P.M.

Sun hours 8 P.M. to 12 15 am
Sat " 9 P.M. to 12 M

PRICE AGREED UPON: 120.00 per date
(Terms and Amount)

To be paid: after each engagment
(Specify When Payments Are To Be Made)

Filed in U. S.

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer

Street Address

City or State

Phone

Accepted by Employer

Accepted Johnny Glaser
(Employer)

By Al Menke
(Representatives of Employees)

FORM B

Printed in U. S. A.

Plaintiffs' Exhibit B.
District Court December 13, 1944.

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| NAMES OF EMPLOYEES | LOCAL NUMBER | S. S. NUMBER | WAGES |
|---|---|---|---|
| Johnny Glaser (Leader) | 477 | 470-03-1542 | 10.00 |
| Leon Ortyl | " | 170-05-1994 | 5.00 |
| Karl Orser | " | 470-10-3277 | 5.00 |
| Paul Hostetler | " | 470-10-4579 | 5.00 |
| Fred Baranyai | " | 470-051996 | 5.00 |
| LeRoy Hawkins | " | 470-05-1907 | 5.00 |
| Larry Glaser | " | 470-05-1995 | 5.00 |
| Loren Helberg | " | 328-18-6127 | 5.00 |
| Frank Crebshaw | " | 484-07-[illegible] 1121 | 5.00 |
| Winton Churchill | " | 475-16-[illegible] 2413 | 5.00 |
| Richard Steele | " | 284-12-1750 | 5.00 |
| Claude LePuc | " | 483-12-4969 | 5.00 |

Plaintiffs' Exhibit B.
Filed in U. S. District Court December 13, 1944.

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Telephone 770

AL MERIKE ORCHESTRA 1000000 Friends

315 Lake Park Boulevard Fairmont, Minnesota

R.C.
12 1/14/44

11/23/42

FILED
DEC 1 3 1944
N. F. Reed
CLERK

Mr. Larry Geer
Fort Dodge, Iowa

Dear Larry:

Enclosed please find the contracts for Nov. 26th. and will you please file with union.

In regard to later dates you mentioned, I may have January 2nd.1943 open. Since we will open at Denver on January 7th. 1943 later dates will be out for some time. I am enclosing a circular about the Denver job, of five months. However, if at all possible, I want to retunr here at Easter and of course, I will know after we get there just how the gas rationing etc. will work out. Also the war. I feel that this war may not last as long as some people seem to think and I want to be here or in the territory, when it is over.

Filed in U.

Do you have any special holiday dances around the 29th. or 30th. of December? I will have 14 pieces at that time(adding a girl singer only) and if you have anything at that time I will be glad to play it for you. Also about the date of Tuesday night January 5th.1943. I have you down for this night at Storm Lake and plan to go out to Denver ~~there~~ from there, but I havn't satisfied myself that two days will give me enough time to travel. Will it be OK to let you know definitely on t is a little later?

I will see you Thursday and following are the dates that I have with you:

Nov. 26 Ft. Dodge Nov. 28th., Storm Lake
Dec. 8th. Storm Lake Dec. 25th. Ft. Dodge. Dec. 26th. Storm Lake

then Jan. 5th. Storm Lake(?)

Kindest Regards

- Al Menke

Plaintiffs' Exhibit C.
S. District Court December 13, 1944.

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[fol. 238] Q. You have been in the dance orchestra business for how many years? A. Thirty years.

Q. You are familiar with the practices of dance orchestras? A. Well, I hope so.

Q. Well, you are; is that true? A. Yes.

Q. Some times didn't you play engagements on what is known as a percentage of the profit? A. Yes.

Q. During 1941 and 1942? A. Yes.

Q. Tell the court what that is?

A. Well, you get a guarantee of a certain amount agreed upon with a percentage of the profit.

Q. With the establishment owner?

A. Of the receipts, yes.

Q. If you entered into a percentage of the profit arrangement what does that mean?

A. That means that I might get a little more money than the contract called for.

Q. It would run over the guarantee?

A. It would run over the guarantee.

Q. Would your sidemen get any more money in that case? A. No.

Q. Or the leader? A. No.

Q. His wage remained the same as you had determined [fol. 239] for that week? A. Yes.

Q. What can you tell the court as to whether the practices you have described are typical of the practices of persons who have organized dance orchestras?

Mr. Cohen: I object to that question. I don't think the witness is qualified to give an answer to a question of that kind.

The Court: How long have you been in the business?

A. Thirty years.

The Court: It seems to me he ought to know about that. You mean in his neighborhood or that he has had contact with?

Q. In the territory in which your orchestra played engagements? A. Shall I answer?

The Court: Yes. (Defendant excepts).

A. The orchestras that I come in contact with are, any number of them are good friends of mine, and they all

operate the same that I do, I know that. We have had general discussions and conversations on the different ways of operating bands, and they all seem to operate the same way.

Mr. Roberts: That is all.

[fol. 240] Cross-Examination.

By Mr. Harold D. Cohen:

Q. Does your orchestra operate in the same way that Blue Barron and His Orchestra operate?

A. I don't know Blue Barron personally.

Q. Does it operate the same way as Paul Whiteman and his orchestra?

A. I don't know Paul Whiteman personally.

Q. Does it operate the same way as Griff Williams' orchestra? A. I don't know.

Q. There are many orchestras that operate in this territory whose practices you do not know? A. Yes.

Q. Now, Mr. Menke, I think you stated on direct examination that you performed on October 12th and 18th., and November 8th and 26th, 1941. Can you state whether you performed on November 26th, 1941?

A. November 26th, 1941? I would not know unless I looked at my contract, or booking record.

Q. You don't know whether you did operate on that date? A. Not unless I looked up the record.

Q. Mr. Menke, I believe you stated you signed both of these contracts, Exhibits A and B; is that correct?

A. Yes.

Q. Did you read them when you signed them?

[fol. 241] A. Yes.

Q. Did you understand what was in them? A. Yes.

Mr. Cohen: I have no further questions.

The Court: Anything further with this witness?

Redirect Examination.

By Mr. Thomas B. Roberts:

Q. Mr. Cohen asked you about Paul Whiteman. What can you tell the court as to whether his orchestra operates regularly in this territory? A. No, does not.

Q. You are familiar though with most bands that do operate regularly in this territory?

A. What we call territory bands, yes.

Mr. Roberts: That is all.

Witness excused.

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Mr. Charlton: I thought we were doing just as we did in the Cole case. We tried the first case and closed it and then agreed that all of the evidence in the first case should be applicable to the second, and that worked out very fine in both those cases, and I thought that was the way we were doing here, and that would leave Judge Padway's case where it belonged, with the first and second case in.

[fol. 242] Mr. Padway: I have no objection to that.

Mr. Charlton: If Mr. Padway were representing the defendant he would be in both cases. However, I don't believe an intervening party should require a repetition of evidence. The advantage of consolidation in these cases, if any, is the use of applicable evidence in both of them. We do not feel that relative evidence which applies equally to both cases should have to be repeated and gone over again and again in this consolidated trial. We feel, however, Your Honor is perfectly right in granting the right of cross-examination, and we make no objection to cross-examination by intervener's counsel of any witness in the Geer case.

Mr. Padway: As I understand it, I don't think there is much difficulty. Let us see if this will satisfy you, Mr. Charlton. Whatever was said in the Griff Williams case and appears of record is applicable to the Geer case, but the Geer testimony is not applicable to the Bartels case.

Mr. Charlton: We do not agree, Your Honor, and I don't think it is the purpose of consolidation of the cases. I make no objection, and I invite counsel for the intervener to cross examine these witnesses to his heart's content and the making of such record as he thinks the facts warrant [fol. 243] so far as the facts are concerned which are applicable in both cases.

The Court: It seems to be that the consolidation for trial carries with it the right of either party to introduce evidence that may be applicable to both cases, and when so

introduced and the evidence is competent and relevant to either one of the cases, and also competent and relevant to another case, it looks like the court should consider it as such, and not require the evidence to be taken over in the two cases, and I will make an order that that procedure will be followed, unless counsel for either the intervener or defendant, any of the defendants, object to that. If they do we will try them one at a time. These are important matters, and if there is any reason why the right of the court to consider any relevant and competent evidence applicable to all the cases as consolidated should not prevail let us say so now and we will try them one at a time.

Mr. Padway: We want to get through, if that is within the regular procedure. I don't want to lumber up the record. We will say now that the situation would not be so difficult if the testimony given by Mr. Menke was applicable to his own case, but otherwise a good deal of it was incompetent, for some of it is in different territory, and I don't see how it could be considered competent in the Bartels [fol. 244] case; that is the reason for it. If Your Honor thinks this can be reached in this way by agreement on our part that the testimony when relevant may be considered in both cases—

The Court: Relevant and competent.

Mr. Padway: But how can the court say that certain evidence is to be considered?

The Court: It is up to the court to determine what is relevant and competent evidence. It is up to the court to determine what is competent and relevant evidence applicable to both cases.

Mr. Padway: If it is competent in one case I understand the court is going to consider it in the other case. If it is relevant in one case it may not be in the other. It is a question with me whether he can do that or not as a practicable matter. But it occurs to me that Menke, in his position, he is a different kind of a contractor; he is not a band leader; he goes out and hires a leader.

The Court: If the evidence is not competent in the Bartels case we will not consider it; if it is, we will.

Mr. Padway: I think the decent thing to do is to abide by the ruling of the court as facilitating both the trial and [fol. 245] the decision, if the court is to determine what is competent. So let it go at that, the court having ruled that the cases are consolidated, and what is competent in one case is to be considered competent in the other case, and what is incompetent in one case is to be considered incompetent in the other case.

Mr. Cohen: In the event that it is necessary to take the case up, say an appeal should be taken in the Bartels case and not in the Geer case, would not the record not contain many matters which the court would feel they were not interested in?

The Court: That would be for the attorneys to decide. They would only take up that which would be relevant to show in the [appelate] court. You do not have to take up everything that is introduced. Don't try to get me to advise what you are going to put in the record on appeal. That is another thing that I do not worry about.

Mr. Cohen: The record would not show which evidence this court considered material to the Bartels case?

The Court: Not unless I read it in the opinion. That is one thing we do not have to do, to pick out and consider everything that we considered in the evidence as might have a bearing upon the questions.

Mr. Padway: I now move that insofar as the interveners [fol. 246] are concerned in the Bartels case the evidence of Menke be stricken as incompetent, immaterial and irrelevant, and not bearing upon the issue in that case, and being based upon a contract relationship and agreement to which the Griff Williams and the other organizations involved in the Griff Williams suit and Bartels have no interest, connection, or relevancy or effect.

Mr. Charlton: Is your motion directed to the evidence as an entirety?

Mr. Padway: Yes.

The Court: That is what he said.

Mr. Padway: It is done on the theory you called him as a witness in the Bartels case as well in another. You can-

not do that in both cases under the stipulation. Now having settled the question of consolidation, he being a witness in the Bartels case as well as the other case, and having heard his testimony, I move that it be stricken as not being material, relevant or competent.

Mr. Charlton: Let the record clearly show that the witness Menke was called as a witness in the consolidated case. He was placed on out of order. The order would not have required him to testify at the time he did, and only in that respect was the witness unusual.

The Court: I think that should be overruled.

[fol. 247] (Intervener excepts).

([Recell] 10:30 to 10:40 A. M.)

Mr. Padway: I [wounder] if you would object. I would like to ask the witness Menke one or two questions.

The Court: Come forward, Mr. Menke.

Al Menke, being recalled, testified as follows upon

Cross-Examination.

By Mr. Joseph A. Padway:

Q. I came up from telephoning downstairs and I heard a question put to you and answered by you with respect to Griff Williams and his orchestra, whether you knew how Griff Williams operated, and I believe you said you did not?

A. I do not.

Q. Do you know how Paul Carlson and his orchestra operated? A. No.

Q. Did you know how they operated on or about August 17, 1941? A. No.

Q. Do you know how Tiny Hill and his orchestra operated? A. No.

Q. Did you know how they operated in September 1941?

A. No.

[fol. 248] Q. Do you know how Boyd Raeburn and his orchestra operated? A. No.

Q. Did you know how they operated October 5, 1944?

A. No.

Q. Do you know how Paul Moorhead and his orchestra operates? A. Yes.

Q. You do know how it operates? A. Yes.
Q. Did you know how it operated January 18, 1942?
A. Yes.
Q. Do you know whether he signed a Form B contract or not when he entered into an engagement with the Bartels people, the Crystal Ballroom?
A. By the record, he signed a contract.
Q. Did you ever talk with him about it?
A. About the contract, no.
Q. Did you know what he said when he entered into the contract, and what was said to him about it?
A. No.
Q. You do not know then what particular understanding there was between Bartels and Moorhead at that time?
A. No.
Q. When you say you know how he operated you are [fol. 249] judging from what you have heard from the things he done in the orchestra business, is that right?
A. That is right.
Q. That goes back to what year would you say?
A. I couldn't say for sure. It has been several years, five or six.
Q. You know when Form B came into existence in 1941, in June? A. Yes.
Q. You know how he operated before that time, don't you? A. Yes.
Q. Have you discussed with him how he operates since then personally?
A. That word operates covers—
Q. How he conducts his band?
A. Not only I know how he operates, he hires his men of the orchestra the same as I do mine.
Q. All you know about Moorhead is that he hires his men and pays them as you do?
A. By weekly salary.
Q. That is the only thing you do know?
A. That is what I do know.
Q. You don't know with what form of contract he operated on? A. No.
Q. You don't know the various contracts he entered into in 1941, '42, '43 or '44, do you?
[fol. 250] A. No.

Mr. Cohen: May I be permitted to cross-examine?

The Court: Yes.

Cross-Examination.

By Mr. Harold D. Cohen:

Q. Mr. Menke, I believe you stated—

Mr. Padway: I now renew my objection and motion on the same grounds as I made them before.

The Court: Overruled. (Intervener excepts.)

Q. Mr. Menke, I believe you stated on cross-examination previously that you you did not know the way in which Blue Barron and his orchestra operated; is that correct?

A. That is correct.

Q. Are you able to state whether you know how Jimmy Barnett and his orchestra operated?

A. No, I would not say that I do.

Q. Do you know the way Les Hartman and his orchestra operated? A. No.

Q. Do you know the way Doc Lawson and his orchestra operated on July 4, 1942?

A. I know all of those bands, and I know they all hire men on a weekly salary. Other than that I don't know anything of their different agreements on contracts with the different managements.

[fol. 251] Recross-Examination.

By Mr. Joseph A. Padway:

Q. You stated in response to a question put to you by Mr. Roberts that if there was a loss you would take the loss? A. Yes.

Q. Is that right? A. Yes.

Q. Now you employ an orchestra leader, I understand, to lead the band?

A. Yes.

Q. You are also a member of the American Federation of Musicians personally? A. Yes.

Q. You are familiar with the rules pertaining to the employment of orchestra leaders, and also sidemen?

A. Yes.

Q. You know then, don't you, that it was the rule in 1941— A. Yes—

Q. And is a rule now—

Mr. Charlton: That is objected to—

Mr. Padway: Let me finish the question.

Q. You know that it is a rule and was in 1941 that the orchestra leader must [receiver] in any arrangement that he made for services with any one the amount fixed [fol. 252] by the union in the locality where he works for leaders, and that the sidemen must likewise receive the amount stipulated for services by the local union where it operates? A. Yes.

Mr. Charlton: That is objected to, and may the objection precede the answer?

Mr. Padway: Yes.

Mr. Charlton: That is objected to as calling for the conclusion and opinion of the witness on a subject which according to the opening statements in this case would require him to be a mind reader of the mind of Joseph Petrillo, and not proper cross-examination.

The Court: Overruled. (Plaintiff except.)

Q. You know, do you not, Mr. Menke, that you are required by the rules of the American Federation of Musicians to arrange your pay for the music to be rendered so that it will cover transportation of the leader, transportation of the sidemen, and commissions to the booking agency, and leave a balance to be distributed, and when distributed will not be less than the scale fixed by the union for the leader and for the men, is that right?

Mr. Charlton: The same objection.

The Court: Overruled: (Plaintiffs except.)

[fol. 253] A. Yes. I—

The Court: What did you say?

A: Supposing on this—may I speak freely?

The Court: Yes. Sure.

A. Supposing I blow out two or three tires and I was on a job that I figured close to scale, and it will cost me $150.00 for tires on my bus, I am bound to lose no matter how much the contract called for.

Q. That loss would be what we might term an unforseen loss? A. Yes.

Q. So the union figures by their contract that in figuring the price you must have a price that when you have paid all necessary expenses like transportation, commissions and incidentals that are usual and necessary and can be anticipated will leave for the leader and the sidemen the union scale, is that right?

A. Yes; the boys always get the union scale.

Q. And the leader must get the union scale?

A. And the leader, but he is the one that may have a loss.

Q. You were an owner, you did not happen to be a leader, did you?

A. No. I am not a leader.

Q. I do not see on these contract, Mr. Menke, the name of a booking agency; did you have a booking company?

A. I booked them myself.

[fol. 254] Q. Are you familiar with the booking agency, the American Booking Agency?

A. When I say I book my own orchestra, I book my own except a few that I have had booked by an agency.

Q. You are familiar with the methods of booking agencies, you know that booking agencies that book bands are the same agencies that book stars and actors from Hollywood; is that right? A. Yes.

Q. And if a band takes along a feature artist and singer that same agency books that one on the reverse side of the contract Exhibit A, dated the 7th of October 1941. I notice that you have under the title, names of employes and number of men listed, and then you have Local No. 477; does that [man] the Local Union number? A. Yes.

Q. Of which they are members? A. Yes.

Q. Then you have the social security numbers?
A. Yes.
Q. Then you have another column headed wages?
A. Yes.
Q. I notice you have a name, Johnnie Glazer; who is Johnnie Glazer? A. He was my leader.
[fol. 255] Q. I notice he gets $10.00 for that night's work? A. On that contract.
Q. Whereas the sidemen, the other men, they receive $5.00 each?
A. Yes, that is correct.
Q. In the contract of November 23, 1942, plaintiffs Exhibit A, you have the leader listed, and the men listed, I don't see the wages set forth in the column, what were they paid, if you know? What was your leader paid?
A. I would not know.
Q. Have you at least a fair idea of what you paid the leader for the engagement?
A. No, I never paid for a single engagement. I paid a weekly salary at all times.
Q. Now this was not the weekly salary fixed by this nightly salary?
A. That is the nightly salary. The union requires that.
Q. Requires you to split it up?
A. When I file the contract sometimes I make a duplicate copy of it, and some times I didn't do it.
Q. Would you look at these contracts, the total amount and total men in here, and I would like you to tell me if you can whether the leader's salary would be much above the $10 you have in the other contract?
A. Much above the contract?
[fol. 256] Q. Yes?
A. There would be no way for me to give you an accurate figure on that.
Q. I don't care about the accuracy, but within a dollar or two?
A. I would not know about that.
Q. You would not say that it would go to $20 instead of $10.00? A. No.
Q. You would not say the men would get $5.00 instead of $10.00? A. No.
Q. Would it not be reasonable to infer that it would be close to that, within a dollar or two?

A. Possibly.

Q. The union does not prohibit the distribution of larger than the scale? A. That is right.

Q. It must not be below the scale? A. That is right.

Mr. Padway: That is all.

Witness excused.

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[fol. 257] PAUL MOORHEAD, called as a witness on behalf of the plaintiffs, and first duly sworn by the Clerk, testified as follows:

Direct Examination.

By Mr. Thomas B. Roberts:

Q. Will you give your name to the reporter?

A. Paul Moorhead.

Q. Where do you live, Mr. Moorhead?

A. Omaha, Nebraska.

Q. What can you tell us as to whether or not your name was identified with an orchestra during the year 1941?

A. It was.

Q. What was the name of the orchestra?

A. Paul Moorhead and His Orchestra.

Mr. Padway: I can't hear you.

A. Paul Moorhead and His Orchestra.

Q. When did you first assemble your orchestra?

A. January 1926.

Q. January 1926; and where was that?

A. Omaha, Nebraska.

Q. Was that the first date it was known as Paul Moorhead and His Orchestra? A. Yes.

Q. Now during the period that your orchestra was in existence did its performances consist mainly in playing [fol. 258] popular dance music? A. Yes.

Q. What types of establishments did your orchestra play engagements for during the period it was in existence?

A. Well, I would like to say it is still in existence. It was Ballrooms throughout the middle west territory.

Q. Any other types of organizations that you played for, civic organizations?

A. If they were giving a dance.

Q. Social organizations? A. Just dance music.

Q. College fraternities? A. Yes.

Q. Your organization or orchestra was playing over the radio? A. Yes, sir.

Q. Do you recall that your orchestra played an engagement at the Crystal Ballroom, Dubuque, Iowa, in January 1942? A. Yes, I do.

Q. I will hand you, Mr. Moorhead, what the reporter has marked Exhibit W, and ask you if that is the contract for your orchestra engagement at that Ballroom on that date, January 18th, 1942?

[fol. 259] A. Yes, that is right.

Q. Did you have a broker at the time this engagement was entered into; a booking agency? A. Yes.

Q. Who was that? A. Vic Schroeder Agency.

Q. That is at Omaha, Nebraska? A. Yes.

Q. And that agent booked that engagement for you? A. Yes.

Q. Did you ever play an engagement at the Crystal Ballroom before January 18, 1942? A. Yes, sir.

Q. You mentioned that you assembled your orchestra back in 1934? A. '36.

Q. '36. I beg your pardon. What can you tell us as to who selected the sidemen at that time?

A. When I started the orchestra I bought it from a fellow. He come in a bus and I got it. I didn't even know their names.

Q. You subsequently became acquainted with their names? A. That is right.

Mr. Cohen: Now, if the court please, I would like to object to any testimony which has to do with orchestras [fol. 260] other than those in issue in this case. An orchestra is more than just a leader. It is an aggregation of musicians. I think counsel should have listed those who were on this particular engagement, and then directed questions to that particular engagement; otherwise I believe this evidence attempted to be elicited is immaterial.

The Court: Overruled. There are a good many ways to admit proof of matters. Some times it is necessary to go round-about. Overruled. (Defendant excepts).

Q. Now from time to time after you got that orchestra, as you testified, did you have some replacements?

A. Yes, a good many.

Q. Who made those replacements?

A. I made the selection.

Q. Of the men who took the places? A. Yes.

Q. What can you tell the court as to whether the sidemen who played the engagement of January 18th 1942, were selected by you some time prior to that date?

A. They were.

Q. What can you tell the court as to whether some of your men had been selected prior to June 25, 1941, the date of the contract. A. They were.

[fol. 261] [A. They were.]

Q. Now when you hired or selected the sidemen for your organization did you talk to them about their pay?

A. Yes, sir.

Q. Tell them how much you would pay them?

A. Yes, sir.

Q. You inquired about their experience?

A. You would if you did not know him personally, but I knew most of them personally.

Q. Did you ever audition him? A. No.

Q. Have him play with the band?

A. If they cannot cut it they get out.

Q. Will you explain that to the court?

A. If they do not play well enough you give them notice and find a replacement.

Q. You did that? A. Yes.

Q. Who determined the number of men in your orchestra? A. I did.

Q. That was true in 1941 and 1942? A. Yes.

Q. Now you told about a man if he could not cut it you would give him notice. Were you the man that told him to leave the orchestra?

[fol. 262] A. That is right.

Q. In other words, you would discharge him?

A. That is right.

Q. Now what can you tell the court as to whether or not during the years your orchestra has been in existence you endeavored to have it play a distinctive style of music?

A. Yes, we did. At the time we were playing these contracts it was a slide style of music.

Q. Some name for that, is there not? A. Slide music.

Q. That was true during 1942, all of 1942?

A. No, that was during 1941.

Q. 1941? A. 1942, in January, it was.

Q. Now in order to produce the slide music did you have a musical library?

A. Yes, all except the arrangement.

Q. Who paid for those? A. I did.

Q. And did you have somebody to prepare the arrangement for you? A. Yes.

Q. And did you, when you had replacements as you testified, did you pick the men that you thought would produce that music?

[fol. 263] A. Yes, sir.

Q. You determined your instrumentation with that in mind, didn't you? A. Yes.

Q. That was true at the time of this engagement at the Crystal Ballroom? A. Yes.

Q. Also later on in February at the Geer Ballroom too?

A. I don't know without looking it up. I presume we did with Larry or Mr. Geer, but the slide music went out, the three trombones all at once.

Q. You got some replacements for those three trombones?

A. That is true. That was the end of the slide music.

Q. Did your orchestra have a theme song? In 1942?

A. Yes.

Q. Who selected that?

A. I would not say I selected it. I didn't use it any more. That was rather beside the point. I would select it, enough to count.

Q. There have been times when you had a theme song?

A. Now, yes.

Q. What can you tell the court as to whether you rehearsed the orchestra in advance of this engagement in the

Crystal Ballroom in January 1942; did you have some rehearsal?

[fol. 264] A. Yes.

Q. At the rehearsal did you try to work out chords and harmonies with the musicians?

A. That is on the arrangement. You just play the arrangement.

Q. You practiced? A. Yes.

Q. You make suggestions at times? A. Yes.

Q. Did you have any feature members of your organization during 1942? A. Yes.

Q. Did you have any vocalists?

A. No, not just single.

Q. Did you have several? A. Yes.

Q. You selected those?

A. They were just members of the orchestra.

Q. Just members who sing at times during the orchestra performance? A. Yes.

Q. Now did your orchestra use any music racks during the playing of its engagements in 1942?

A. Yes.

Q. Who furnished those?

A. I bought them.

[fol. 265] Q. Going back to the musical arrangement for a moment, did you pay for those? A. Yes.

Q. They became your personal property?

A. That is right.

Q. Did your orchestra use a public address system during the year 1942? A. Yes.

Q. Who furnished that? A. I did.

Q. What can you tell the court as to whether you had any special lighting fixtures that were used in connection with the orchestra performance during 1942?

A. Very little. Oh, we did carry spots and floods.

Q. You set those up? A. Yes.

Q. Who owned those? A. I did.

Q. Did the sidemen wear any special attire during the performances of the orchestra engagements during 1942?

A. Yes; had uniforms.

Q. Who selected those? A. I did.

Q. Now what can you tell the court as to how your orchestra traveled to these various engagements during 1942?

[fol. 266] A. Sleeper trailer.

Q. Sleeper trailer? A. Yes; semi.

Q. Semi-trailer? A. Yes.

Q. Who owned that? A. I did.

Q. Registered in your name?

A. That is right.

Q. You mentioned a sleeper trailer, how many persons could sleep in that vehicle?

A. We were just sleeping ten.

Q. In some kind of bunks on the inside, or berths rather?

A. Berths.

Q. You used that bus to travel to the engagements in the Crystal Ballroom? A. Yes.

Q. Also any engagements you may have had at the Geer Ballroom? A. Yes.

Q. During the year 1942? A. Yes.

Q. Mr. Moorhead, I will hand you what has been marked Exhibit B-1, and ask you to examine that document and ask you if the entries there in ink in longhand are in [fol. 267] your writing?

A. Yes, this is my writing.

Q. Is that the document entitled weekly business report?

A. Yes, sir.

Q. And on the reverse side of the document it is headed by "Itemized operating expense"?

A. Yes, that is right.

Q. I note on the front of the exhibit some columns, and in the extreme lefthand one is entitled "Days Played". There is a list there in pen and ink, that is from January 17th to January 23rd; is that right?

A. That is right.

Q. And that is for the week ending January 23rd, 1942?

A. Yes.

Q. And do you have under the date of January 18th, the word Dubuque? A. Yes.

Q. Is that in your handwriting? A. It is.

Q. You show in the column under gross receipts $120.40?

A. Yes.

Q. Is that what you received from the engagement of January 18th at the Crystal Ballroom?

A. Yes.

Q. That is included with a number of receipts from other [fol. 268] engagements, is that correct?

A. Yes, sir.

Q. And the total for that week is $677.44, is that right?

A. That is right.

Q. And that is entered below under the general heading of "Cash Account" showing the total income for the week as $667.44 is that right? A. Yes.

Q. That is in your handwriting, the figures?

A. Yes.

Q. Then you have listed operating expense $574.91, is that right?

A. Yes.

Q. And the balance is noted in the statement Balance profit or loss, $101.53, is that right?

A. Yes.

Q. Who received that? A. I did.

Q. Turning to the reverse side of the exhibit do you find a few items in your handwriting, your operating expense for that week in which January 18th, 1942, occurred?

A. Yes.

Q. First you have A.F.M., checks $26.80?

A. Yes.

Q. Now you have a list of salaries paid; is that list all [fol. 269] the amounts in your handwriting?

A. Yes.

Q. And that is a total of $385.81 salaries?

A. Yes.

Q. Who determined those amounts, Mr. Moorhead?

A. Payable to the musicians?

Q. Yes. A. I did.

Q. That represents what you had agreed to pay them for that week?

A. Well, looking at these names there, they did not all get $12.00.

Q. At any rate the amounts you set out here is the amount you determined to pay them; is that right?

A. That is right.

Q. Then you have an item in your handwriting opposite the printed words, gasoline only, $30.80?

A. Yes.

Q. Oil $4.90?

A. Yes.

Q. What was that gasoline and oil for, if you know?
A. Driving the bus.
Q. During that week?
A. Yes.
Q. Then you have some other items, bulbs, .98 cents, in
[fol. 270] your handwriting? A. Yes.
Q. And you have a Lewis Kozisek, $15.00?
A. Driver.
Q. Driver of your bus? A. Yes.
Q. Is that the amount you had agreed to pay?
A. Yes.
Q. For his services during this week?
A. Yes.
Q. The booking office, Vic Schroeder Agency $101.53?
A. Yes.
Q. The amount in your handwriting?
A. Yes.
Q. In the other column on the righthand side there are various other expenses in your handwriting?
A. Yes.
Q. You have one item I notice here [deoderant]?
A. Twenty-five cents.
Q. Telephone $3.70? A. Yes.
Q. P. A. Sitz rubbers $4.75?
A. Yes.
Q. One item of special arrangements, Bob Roper, $10.00. Is that the sum of money you paid him for the arrange-
[fol. 271] ments? A. Yes.
Q. And the words Bob Roper $10.00 is in your handwriting? A. Yes.
Q. All of these expenses that appear in your handwriting total $574.91, which was carried forward to the first page of the report; is that correct?
A. That is correct.
Q. Did you keep such a record as appears on Exhibit B-1 for each week during 1942?
A. Yes.
Q. And had you kept such a weekly report during prior years? A. Yes.
Q. That is during '41 and '39? A. Yes.
Q. Showing items of income and various items of expense?
A. These reports, however, stopped November 4, 1942.

Mr. Roberts: I now offer in evidence plaintiffs' Exhibit B-1.

Mr. Padway: We have no objection.

Mr. Cohen: No objection.

The Court: It is admitted.

Exhibit 8-1
11/12/44
HEB

VSA #2463, 97.40

VSA
VETERANS SERVICE ASSOCIATION

# WEEKLY BUSINESS REPORT

Week Ending Jan 23, 1942

Month 1

Band

| Dates Played | SPOTS PLAYED | | Gross Receipts | Less AFM | Net Receipts | Less Mileage | Net Balance | Fees Payable |
|---|---|---|---|---|---|---|---|---|
| Jan 17 | Des Moines | Iowa | 100.00 | 7.35 | | | | |
| " 18 | Dubuque | → | 102.40 | 4.90 | | | 97.50 | |
| " 19 | Open | | | | | | | |
| " 20 | Dante | So Dak. | 146.50 | | | | | |
| " 21 | Des Moines | Iowa | 85.00 | 7.35 | | | | |
| " 22 | St. Joseph | Mo. | 85.00 | 7.20 | | | | |
| " 23 | Elkton | S. D. | 157.54 | | | | | |
| | | | 676.44 | 26.80 | | | | 97.90 |
| | | | | | | | | 10.53 |

FILED
DEC 1 7 1944
M. T. Reed
CLERK

# CASH ACCOUNT

| | |
|---|---|
| Gross Engagement Receipts | $ |
| Plus Union Returns Received | $ |
| Plus Partnership Paid In | $ |
| Total Income This Week | $ 676.44 |
| Less: Operating Expenses This Week | $ 514.91 |
| Balance — Profit - Loss | $ 161.53 |
| Less: Paid to Partners | $ |
| Balance (Long) (Short) | $ |
| Less: Payments Made | $ |
| Balance (Long) (Short) | $ |
| Less: Purchases | $ |
| Balance (Long) (Short) | $ |
| From Last Week—Balance (Long) (Short) | $ |
| To Date—Balance (Long) (Short) | $ |

**PAID TO PARTNERS**

| | |
|---|---|
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| TOTAL | $ |

**PAYMENTS MADE**

| | |
|---|---|
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| TOTAL | $ |

**PURCHASES**

| | |
|---|---|
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| TOTAL | $ |

Plaintiffs' Exhibit B-1.
Filed in U. S. District Court December 13, 1944.

171

# CASH ACCOUNT

| | |
|---|---|
| Gross Engagement Receipts | $ |
| Plus Union Returns Received | $ |
| Plus Partnership Paid In | $ |
| Total Income This Week | $ 676.44 |
| Less: Operating Expenses This Week | $ 514.91 |
| Balance — Profit - Loss | $ 161.53 |
| Less: Paid to Partners | $ |
| Balance (Long) (Short) | $ |
| Less: Payments Made | $ |
| Balance (Long) (Short) | $ |
| Less: Purchases | $ |
| Balance (Long) (Short) | $ |
| From Last Week—Balance (Long) (Short) | $ |
| To Date—Balance (Long) (Short) | $ |

PAID TO PARTNERS

| | |
|---|---|
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| TOTAL | $ |

PAYMENTS MADE

| | |
|---|---|
| | $ |
| | $ |
| | $ |
| | $ |
| TOTAL | $ |

PURCHASES

| | |
|---|---|
| | $ |
| | $ |
| | $ |
| | $ |
| TOTAL | $ |

Plaintiffs' Exhibit B-1.
Filed in U. S. District Court, December 13, 1944.

171

# ITEMIZED OPERATING EXPENSES

| | |
|---|---|
| AFM TAX PAID | $ 26.80 |
| **SALARIES PAID** | |
| Eddie Rasmussen | $ 12.00 |
| Tony Moreno | $ 54.11 |
| Kendall Hall | $ 54.11 |
| Harry Lorenzen | $ 35.00 |
| Tiny Wehland | $ 80.00 |
| Porky Jungers | $ 40.00 |
| Bob Roper | $ 35.00 |
| Harry Campbell | $ 35.16 |
| Lee Stryker | $ 30.00 |
| Bill Wollermade | $ 20.00 |
| Art Koterba | $ 6.43 |
| Stand By Tonia Del Monaco | $ 14.00 385.81 |
| Gasoline only | $ 30.80 |
| Oil only | $ 4.90 |
| Tractor Repairs only | $ |
| **Other Transportation Expenses:** | |
| Bridge Tolls | $ |
| Parking or Storage | $ |
| Trailer Repairs | $ |
| Fuel for Stove | $ |
| Washing | $ |
| Greasing | $ |
| Tire and Tube Repairs | $ |
| Taxi | $ |
| Plane, Train or Bus | $ |
| Cleaning Bus | $ |
| Cleaning Sleeper Furnishings | $ |

| | |
|---|---|
| Total Forwarded from Left Column | $ 550.76 |
| Photos, Plates, Pictures, etc. | $ |
| **Good Will Expense** | |
| Tromar Jan 12 | $ 2.75 |
| Dante " 20 | $ 6.25 |
| ELKTon " 23 | $ .75 |
| 5.75 | $ |
| | $ |
| | $ |
| | $ |
| Advertising (Not Ballroom News) | $ |
| Special Arrangements (Music) Bob Roper | $ 10.00 |
| Sub-Booker (Not VSA) | $ |
| Stocks and Sheet Music, etc. (Music) | $ |
| PA Set Repairs only | $ 4.45 |
| Soc. Security and Excise Unemploym't Taxes | $ |
| Other Taxes, Licenses, Compensation | $ |
| Insurance for Business only | $ |
| Interest Paid | $ |
| **Miscellaneous Expenses** | |
| Telephone and Telegraph | $ 3.70 |
| Hotel | $ |
| Food Away from Home | $ |
| Uniform—Cleaning and Repairs | $ |
| Uniform—Laundry and Repairs | $ |
| Instrument Repairs | $ |
| Reeds, Oil, Strings, etc., for Instrument | $ |
| Tips (Business Services) | $ |
| Legal Services | $ |

Plaintiffs' Exhibit B-1.
Filed in U. S. District Court December 13,

| | | | |
|---|---|---|---|
| Cleaning Bus | $ | Legal Services | $ |
| Cleaning Sleeper Furnishings | $ | Sales Taxes on Non-Expense Items | $ |
| Replacing Sleeper Furnishings | $ | War Tax on Non-Expense Items | $ |
| Lewis Kozisek | $ 20 00 | Bus Deodorant | $ 25 |
| Plugs + Bulbs (Bus | $ 92 | | $ |
| Vic Schroeder Agency, Booking Fees | $ 101.53 | | $ |
| Advertising (Ballroom News) | $ | TOTAL PAID OUT 3,128 | $ 574 91 |
| Total Forwarded to Right Column | $ ~~101 53~~ 550 76 | | |

| | | | |
|---|---|---|---|
| Cleaning Bus | $ | Legal Services | $ |
| Cleaning Sleeper Furnishings | $ | Sales Taxes on Non-Expense Items | $ |
| Replacing Sleeper Furnishings | $ | War Tax on Non-Expense Items | $ |
| Lewis Kozisek | $ 20.00 | Bus Deodorant | $ .25 |
| Plugs & Bulbs (Bus | $ .92 | | $ |
| Vic Schroeder Agency, Booking Fees | $ 101.53 | | $ |
| Advertising (Ballroom News) | $ | TOTAL PAID OUT 3,178 | $ 574.91 |
| Total Forwarded to Right Column | $ ~~101.53~~ 550.76 | | |

1944.

173

[fol. 274] Q. I hand you, Mr. Moorehead, what the reporter has marked Exhibits B-2, B-3, B-4, B-5, and ask you to examine them, and ask you if Exhibit B-2 is a contract dated December 19, 1941, for an engagement by your orchestra at the Cobblestone Ballroom, Storm Lake, Iowa, January 3, 1942; is that right?

A. Yes, that is right.

Q. Who operates the Cobblestone Ballroom?

A. Larry Geer.

Q. Is Exhibit B-3 another contract dated September 16, 1942 for an engagement of your orchestra on October 13, 1942, at the Cobblestone Ballroom? A. Yes, it is.

Q. Is Exhibit B-4 another contract dated March 25, 1942 for an engagement by your orchestra at the Cobblestone Ballroom on Tuesday, April 3, 1942? A. Yes.

Q. And Exhibit B-5 another contract dated January 13, 1942, for an engagement at the Laramar Ballroom, Fort Dodge, Iowa, January 28, 1942? A. Yes.

Q. Who operated the Laramar Ballroom at that time, if you know? A. Larry Geer.

Q. All of these contracts were booked through your booking agency, Vic Schroeder Booking Agency, at Omaha, Nebraska? A. Yes.

[fol. 275] Mr. Roberts: The plaintiffs offer in evidence Exhibits B-2, B-3, B-4 and B-5.

Mr. Cohen: I object to the admissibility of these exhibits on the ground that they do not relate to any of the engagements which are at issue in either of the cases.

Mr. Roberts: I beg your pardon. I was handed the wrong bunch of exhibits. We will withdraw the offer.

Q. I will hand you, Mr. Moorhead, Exhibits marked B-6 to B-24, both inclusive, and ask you if all of those exhibits are contracts for engagements by your orchestra at Geer Ballrooms? A. Yes.

Q. And the date shown on each of those exhibits is the date of the contract; is that correct?

A. Yes; those are the contracts.

Q. They are all dated? A. Yes.

Q. And each one of them has the date of the engagement; is that right?

A. As far as I know. It should be.

Q. As far as you know? A. Yes.

Q.. And they are all booked by your booking agency, Vic Schroder, Omaha?

A. Well, I can't say they were all played. Some times [fol. 276] we changed the dates. They should be correct.

Mr. Roberts: The plaintiffs offer in evidence Exhibits B-6 to B-24 both inclusive.

Mr. Cohen: I have no objection.

Mr. Padway: I have no objection.

The Court: Admitted.

booking agency,

ed. Some times
ould be correct.

vidence Exhibits

Exhibit B
11-10-44 HEB

FILED
DEC 1 1944
CLERK

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 13 day of January, 194 2, between the undersigned employer (hereinafter called the employer and Nine (9) Men musicians (hereinafter called employees) represented by the undersigned representative. (including Leader)

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Larsen Ballroom<br>Fort Dodge, Iowa. | Sun. February 27, 1944 | From 8:30 P.M. - 12:15 A.M. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

on or before conclusion of above engagement.
To be paid
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer: Mr. Larry Geer — Accepted by Employer: Larry Geer

Street Address: P. O. Box No. 5 — Accepted (Orchestra Leader): Vic Schroeder

City or State: Fort Dodge, Iowa. — By (Representatives of Employees):

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1288, Omaha, Nebraska.

No. 7132 A

Plaintiffs' Exhibit B-6.
Filed in U. S. District Court December 13, 1944.
177

| | | | |
|---|---|---|---|
| #463 | Michael Moreno | 503-09-1257 | $ 8.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 6.00 |
| #137 | LeRoy Stryker | 505-18-2248 | $ 6.00 |
| #70 | Harry Lorenzen | 505-14-5524 | $ 6.00 |
| #70 | Art Koterba | 508-16-8072 | $ 6.00 |
| #70 | Leo Rex Wheland | 506-09-5804 | $ 6.00 |
| #255 | Wendall Hall | 506-10-3312 | $ 6.00 |
| #230 | Merlin Wm. Jungers | 484-09-4235 | $ 6.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 6.00 |
| Transportation, Taxes, Comm. & Miscl. | | | $ 44.00 |
| | | TOTAL | $100.00 |

Plaintiffs' Exhibit B-8.
Filed in U. S. District Court December 13, 1944.
187

| | |
|---|---|
| #463 | Michael Moreno |
| #404 | Robt. Roper |
| #70 | Arthur Roterbe |
| #70 | Harry Lorenzen |
| #70 | Wendall Hall |
| #70 | Neil Whitesides |
| #450 | Russell Sapp |
| #70 | Leo Rex (Max) Whe |
| #239 | Merlin Jungers |

TRANSPORTATION, TAXES, MISCL.

Plaintiffs' Exhibit B-6.
Filed in U. S. District Court December 13, 1944.

| | | |
|---|---|---|
| | 503-59-1257 | $ 8.00 |
| | 507-14-6281 | $ 6.00 |
| | 508-16-9072 | $ 6.00 |
| | 505-14-5824 | $ 6.00 |
| | 506-10-3312 | $ 6.00 |
| s | 507-03-5426 | $ 6.00 |
| | 479-13-1007 | $ 6.00 |
| Wheland | 506-09-5804 | $ 6.00 |
| | 484-09-4235 | $ 6.00 |
| L. & COM. | | $44.00 |
| | T O T A L | $100.00 |

EXHIBIT B-7
HEB
12/13/44

FILED
DEC 13 1944
M. F. Reed
CLERK

# VIC SCHROEDER AGENCY

Omaha, Nebr.

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 26 day of February, 194 2, between the undersigned employer (hereinafter called the employer) and Elmo (9) Ens (Including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH: That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD. according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Larrabee Ballroom<br>Ft. Dodge, Iowa<br>~~Larrabee Ballroom~~<br>~~Fort Dodge, Iowa~~ | Sat. March 21, 1942 - | From 9:00 P.M. - 12:00 A.M. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Mr. Larry Geer — Accepted by Employer

Street Address P. O. Box No. 8 — Accepted (Orchestra Leader)

City or State Fort Dodge, Iowa. — By Vic Schroeder (Representatives of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1299, Omaha, Nebraska.

77

No. 7333 A

Plaintiffs' Exhibit B-7.
Filed in U. S. District Court December 13, 1944.
181

| | | | |
|---|---|---|---|
| #463 | Michael Moreno | 603-09-1257 | $ 6.50 |
| #463 | Wm. Woltemade | 505-18-8236 | $ 5.00 |
| #137 | LeRoy Stryker | 505-18-2248 | $ 5.00 |
| #70 | Harry Lorenzen | 505-14-5524 | $ 5.00 |
| #70 | Art Koterba | 508-16-8072 | $ 5.00 |
| #255 | Wendall Hall | 506-10-3312 | $ 5.00 |
| #70 | Leo Rex Wheland | 506-09-5804 | $ 5.00 |
| #230 | Merlin Wm. Jungers | 484-09-4235 | $ 5.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 5.00 |
| Transportation, Taxes, Comm. & Misc. | | | $ 53.50 |
| | | TOTAL | $100.00 |

Plaintiffs' Exhibit B-7.
Filed in U. S. District Court December 13, 1944.

EXHIBIT

B HEB 12/12/44

FILED
DEC 13 1944
J. Reed
CLERK

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 14 day of February 194 2, between the undersigned employer (hereinafter called the employer and by the undersigned representative. Nine (9) Men (including Leader) musicians (hereinafter called employees) represented

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

[redacted] according to the following terms and conditions:

Plaintiffs' Exhibit B-8.
Filed in U. S. District Court December 13, 1944.

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Larmar Ballroom<br>Fort Dodge, Iowa. | Sun. March 22, 1942 | From 8:40 PM. - 12:15 AM. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation; riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Mr. Larry Geer — Accepted by Employer

Street Address P. O. Box No. 5 — Accepted (Orchestra Leader)

City or State Fort Dodge, Iowa. — By Vic Schroeder (Representative of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1299, Omaha, Nebraska.

No. 7334 A

185

Plaintiffs' Exhibit B-10.
Filed in U. S. District Court December 13, 1944.

| | | | |
|---|---|---|---|
| #463 | Michael Moreno | 503-09-1257 | $ 7.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 5.00 |
| #137 | LeRoy Stryker | 505-18-2248 | $ 5.00 |
| #70 | Harry Lorenzen | 505-14-5524 | $ 5.00 |
| #70 | Art Koterba | 508-16-8072 | $ 5.00 |
| #255 | Wendell Hall | 506-10-3312 | $ 5.00 |
| #70 | Leo Rex Wheland | 506-09-5804 | $ 5.00 |
| #230 | Merlin Wm. Jungers | 484-09-4235 | $ 5.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 5.00 |
| Trans. Taxes. Comm. & Miscl. | | | $ 53.00 |
| | | Total | $100.00 |

195

Ex B-9
DWH HEP

FILED
DEC 13 1944
CLERK

# VIC SCHROEDER AGENCY

Omaha, Nebr.

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 25 day of March 194 2 between the undersigned employer (hereinafter called the employer) and Nine (9) Men. (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD. according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Cobblestone Ballroom<br>Storm Lake, Iowa. | Sat. April 18, 1942 | From 9:00 PM. - 12:55 AM. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians Local in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Plaintiffs' Exhibit B-9.
Filed in U. S. District Court December 13, 1944.

| | |
|---|---|
| #463 | Michael Moreno |
| #463 | Wm. Woltemade |
| #137 | LeRoy Stryker |
| #70 | Harry Lorenzen |
| #70 | Art Koterba |
| #255 | Wendall Hall |
| #70 | Leo Rex Wheland |
| #230 | Merlin W. Jungers |
| #443 | Sheldon Fonda |

Trans. Taxes, Comm. & Misc.

Plaintiffs' Exhibit B-9.
Filed in U. S. District Court December 13, 1944.

| | |
|---|---|
| 503-09-1257 | $ 6550 |
| 505-18-5236 | $ 5.00 |
| 505-16-2248 | $ 5.00 |
| 505-14-5524 | $ 5.00 |
| 508-16-8072 | $ 5.00 |
| 506-10-3312 | $ 5.00 |
| 506-09-5804 | $ 5.00 |
| 484-09-4235 | $ 5.00 |
| 072-16-0778 | $ 5.00 |
| | $ 53.50 |
| T O T A L | $100.00 |

191

Ex. B-10
11/17/14
MH B

FILED
DEC 1 1944
CLERK

# VIC SCHROEDER AGENCY

Omaha, Nebr.

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Muirhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Harry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Duchin and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 24 day of April, 194 2, between the undersigned employer (hereinafter called the employer and by the undersigned representative, Nine (9) Men (including Leader) musicians (hereinafter called employees) represented

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of PAUL MUIRHEAD, according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Laramar Ballroom<br>Fort Dodge, Iowa. | Sat. May 2nd, 1942 | From 9:00 PM. - 12:00 PM. |

PRICE AGREED UPON, IS $ 100.00 guaranteed.
(Terms and amount)

on or before conclusion of above engagement.

To be paid
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Mr. Larry Geer
Name of Employer

P. O. Box No. 5
Street Address

Fort Dodge, Iowa.
City or State

Accepted by Employer

Accepted
(Orchestra Leader)

By Barney Parsons
(Representative of Employees)

RETURN ALL COPIES SIGNED TO Vic Schroeder Agency, Box 1298, Omaha, Nebraska

Plaintiffs' Exhibit B-10.
Filed in U. S. District Court December 13, 1944.

193

| | | | |
|---|---|---|---|
| #463 | Michael Moreno | 503-09-1257 | $ 7.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 5.00 |
| #137 | LeRoy Stryker | 505-18-2248 | $ 5.00 |
| #70 | Harry Lorenzen | 505-14-5524 | $ 5.00 |
| #70 | Art Koterba | 508-16-8072 | $ 5.00 |
| #255 | Wendall Hall | 506-10-3312 | $ 5.00 |
| #70 | Leo Rex Wheland | 506-09-5804 | $ 5.00 |
| #230 | Merlin Wm. Jungers | 484-09-4235 | $ 5.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 5.00 |
| Trans. Taxes. Comm. & Miscl. | | | $ 53.00 |
| | | Total | $100.00 |

Plaintiffs' Exhibit B-12.
Filed in U. S. District Court December 13, 1944.

203

Ex. B-11
12/15/44
H.E.B

FILED
DEC 13 1944

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winter and his Orchestra | Bobby Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 24 day of April, 194 4, between the undersigned employer (hereinafter called the employer) and by the undersigned representative Nina (P.) Moore (including Leader) musicians (hereinafter called employees) represented

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD, according to the following terms and conditions

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Cobblestone Ballroom<br>Storm Lake, Iowa. | Sat. May 9th, 1942 | From 9:00 P.M. - 1:00 A.M. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer, the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to prevent detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employer. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer so long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Mr. Larry Coor

Street Address P. O. Box No. 5

City or State Fort Dodge, Iowa.

Accepted by Employer

Accepted (Orchestra Leader)

By Bennie Parsons (Representatives of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1200, Omaha, Nebraska

No. 7965 - A

Plaintiffs' Exhibit B-11.
Filed in U. S. District Court December 13, 1944.
197

Plaintiffs' Exhibit B-11.
Filed in U. S. District Court December 13, 1944.

| | | | |
|---|---|---|---|
| #463 | Michael Moreno | 503-09-1257 | $ 6.50 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 5.00 |
| #137 | LeRoy Stryker | 505-18-2248 | $ 5.00 |
| #70 | Harry Lorenzen | 505-14-5524 | $ 5.00 |
| #70 | Art Koterba | 508-16-8072 | $ 5.00 |
| #255 | Wendall Hall | 506-10-3312 | $ 5.00 |
| #70 | Leo Rex Wheland | 506-09-5804 | $ 5.00 |
| #230 | Merlin Wm. Jungers | 484-09-4235 | $ 5.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 5.00 |
| Trans. Taxes. Comm. & Miscl. | | | $ 53.50 |
| | | Total | $100.00 |

FILED

DEC 13 1994

CLERK

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Duchin and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 24 day of April, 194 2, between the undersigned employer (hereinafter called the employer and Nine (9) Men. musicians (hereinafter called employees) represented by the undersigned representative. (including Leader)

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of PAUL MOORHEAD. according to the following terms and conditions

| Place of Employment | Date(s) of Employment |
| --- | --- |
| Laremar Ballroom<br>Fort Dodge, Iowa. | Sat. May 16th, 1942 |

PRICE AGREED UPON IS $ 100.00 guaranteed.

(Terms a

To be paid on or before conclusion of above engag

(Specify when payments are to

The employer shall at all times have complete control of the services which the employee behalf of the employer the Leader will distribute the amount received from the employer to side of this contract, or in plate thereof on separate memorandum supplied to the employer at and take and turn over to the employer receipts therefor from each employee, including himself portation, which will be reported by the Leader to the employer. The employer hereby autho by illness, absence, or for any other reason does not perform any or all of the services provide perform, is subject to proven detention by sickness, accidents or accident t ns of transp legitimate conditions beyond the control of the employed. The employer agrees that the Busi diction the musicians are playing, shall have access to the premises in which the musicians per ferring with the musicians. The musicians performing services under this contract must be me in this contract shall ever be so construed as to interfere with any obligation which they may

It is agreed that all the rules, laws and regulations of the American Federation of Music whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the

The employer represents that there does not exist against him, in favor of any employee of any kind arising out of musical services rendered for any such employer. It is agreed that will be required to perform any provisions of this contract or to render any services for said e in whole or in part. The employer in signing this contract himself, or having same signed by a r and hereby assumes liability for the amount stated herein.

Name of Employer Mr. Larry Coor

Accepted by

Street Address P. O. Box No. 5

Accepted

City or State Fort Dodge, Iowa.

By

RETURN ALL COPIES SIGNED TO Vic Schroeder Agency, Box 1290, Omaha, Nebraska

Plaintiffs' Exhibit B-12.
Filed in U. S. District Court December 13, 1944.

201

| | Hours of Employment |
|---|---|
| 2 | From 9:00 P.M. - 12:00 P.M. |

ns and amount)

**gagement.**

to be made)

loyees will render under the specifications of this contract (m
to the employees, including himself, as indicated on the opposite
or at or before the commencement of the employment hereunder
mself. The amount paid to the Leader includes the cost of trans-
authorizes the Leader on his behalf to replace any employee wh
rovided for under this contract. The agreement of the employees to
ansportation, riots, strikes, epidemics, acts of God, or any other
Business Representative of the Musicians' Local in whose juris-
e perform (except in private residences) for the purpose of c
e members of the American Federation of Musicians and nothing
may owe to the American Federation of Musicians.

Musicians, and all the rules, laws and regulations of the Local in
the Federation, are made part of this contract.

loyee-member of the American Federation of Musicians any claim
that no employee-member of the American Federation of Musicians
said employer as long as any such claim is unsatisfied or unpaid
y a representative, acknowledges his (her or their) authority to d

by Employer.

(Orchestra Leader)

Representative of Employees)

sana

No. 7968 A

FILED
DEC. 1 1944

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Wilder and his Orchestra | Eddie Carter and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 22 day of [illegible] 194[illegible], between the undersigned employer (hereinafter called the employer and by the undersigned representative [illegible] (including Leader) musicians (hereinafter called employees) represented

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD, according to the following terms and conditions

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Alhambra Ballroom at Twin Lakes (Near) Rockwell City Iowa). | Thur. May 28th, 1942 | From 8:55 P.M. - 12:25 A.M. |

PRICE AGREED UPON IS $ 90.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer: Mr. Larry [illegible]

Street Address: P. O. Box No. 5..

City or State: Fort Dodge, Iowa.

Accepted by Employer

Accepted. (Orchestra Leader)

By: Vic Schroeder (Representative of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1299, Omaha, Nebraska

No. 8113 A

Plaintiffs' Exhibit B-13.
Filed in U. S. District Court December 13, 1944.

205

| | |
|---|---|
| #463 | Michael Moreno |
| #463 | Wm. Woltemade |
| #137 | LeRoy Stryker |
| #70 | Harry Lorenzen |
| #70 | Art Koterba |
| #255 | Wendall Hall |
| #70 | Lem Rex Wheland |
| #280 | Merlin Jungers |
| #443 | Sheldon Fonda |

Ex B-14

FILED

DEC 1 3 1944

VSA

THE SCHROEDER AGENCY

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Lea Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Wilder and his Orchestra | Eddy Duchin and his Orchestra

**THIS CONTRACT** for the personal services of musicians, made this 24 day of April 194 2, between the undersigned employer (hereinafter called the employer) and by the undersigned representative.

Nine (9) Men. (including Leader) musicians (hereinafter called employees) represented

**WITNESSETH**, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD. according to the following terms and conditions

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Laramar Ballroom<br>Fort Dodge, Iowa. | Sun. May 21st, 1942 | From 8:45 PM. - 12:15 AM. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer, as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer: Mr. Larry Geer — Accepted by Employer

Street Address: P. O. Box No. 5 — Accepted (Orchestra Leader)

City or State: Fort Dodge, Iowa. — By: Bonnie Parsons (Representative of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1299, Omaha, Nebraska

77

No. 7976 A

Plaintiffs' Exhibit B-14.
Filed in U. S. District Court December 13, 1944.

| | | | |
|---|---|---|---|
| #255 | Wendall Hall | 506-10-3312 | $ 6.50 |
| #663 | Michael Moreno | 503-09-1257 | $ 5.00 |
| #75 | Bob Adamson | 485-01-1411 | $ 5.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 5.00 |
| #137 | LeRoy Stryker | 505-18-2248 | $ 5.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 5.00 |
| #463 | Don Brehm | 506-05-9945 | $ 5.00 |
| #70 | Horace J. Ort | 507-10-3887 | $ 5.00 |
| #450 | J. R. Sapp | 479-18-1007 | $ 5.00 |
| | | Trans. | $ 21.00 |
| | | Comm. | $ 7.50 |
| | | | $ 75.00 |

Plaintiffs' Exhibit B-16.
Filed in U. S. District Court December 13, 1944.

219

Plaintiffs' Exhibit B-14.
Filed in U. S. District Court December 13, 1944.

211

| | | | |
|---|---|---|---|
| #463 | Michael Moreno | 503-09-1257 | $ 8.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 6.00 |
| #137 | LeRoy Stryker | 505-18-2248 | $ 6.00 |
| #70 | Harry Lorenzen | 505-14-5524 | $ 6.00 |
| #70 | Art Koterba | 508-16-8072 | $ 6.00 |
| #256 | Wendall Hall | 506-10-3312 | $ 6.00 |
| #70 | Leo Rex Wheland | 506-09-5804 | $ 6.00 |
| #330 | Merlin Wm. Jungers | 484-09-4235 | $ 6.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 6.00 |
| Trans. Taxes. Comm. & Miscl. | | | $ 44.00 |
| | | Total | $ 100.00 |

Ex B-15
12/12/44
HE B

VSA
THE STANDARD AGENCY

# VIC SCHROEDER AGENCY

Omaha, Nebr.

FILED
DEC 13 1944

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Lindsey and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 26 day of May 194[illegible] between the undersigned employer (hereinafter called the employer and Nino (9) Men (including Leader) musicians (hereinafter called employees) represented by the undersigned representative [illegible] the said employees severally through their

WITNESSETH. That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD

.....according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Cobblestone Ballroom<br>Storm Lake, Iowa. | Tue. June 2nd, 1942 | From 9:00 PM. - 1:00 AM. |

PRICE AGREED UPON IS : 70.00 guaranteed, plus the privilege that the attraction may take
(Terms and amount)

60% of gross receipts. (Gross earnings of the band not to exceed $100.00).

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer so long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Mr. Larry Geer.

Street Address P. O. Box No. 8

City or State Fort Dodge, Iowa.

Accepted by Employer

Accepted Larry
(Orchestra Leader)

By Bonnie Parsons.
(Representatives of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1209, Omaha, Nebraska.

No 8153 A

Plaintiffs' Exhibit B-15.
Filed in U. S. District Court December 13, 1944.

213

Plaintiffs' Exhibit B-15.
Filed in U. S. District Court December 13, 1944.

215

| | | | |
|---|---|---|---|
| #255 | Wendall Hall | 506-10-3312 | $ 6.50 |
| #463 | Michael Moreno | 503-09-1257 | $ 5.00 |
| #75 | Bob Adamson | 485-01-1411 | $ 5.00 |
| #443 | Sheldon Fonda | 072-16-0778- | $ 5.00 |
| #137 | LeRoy Stryker | 505-18-2248 | $ 5.00 |
| #463 | Wm. Woltemade | 505018-5236 | $ 5.00 |
| #70 | Horace J. Ort | 507-10-3887 | $ 5.00 |
| #463 | Don Brehm | 506-05-9943 | $ 5.00 |
| #850 | J. R. Sapp | 479-18-1007 | $ 5.00 |
| | | Trans. | $ 6.50 |
| | | Comm. | $ 7.00 |
| | | Misc. | $ 10.00 |
| | | | $ 70.00 |

Ex. B 16
12/17/44 HEB

FILED
DEC 13 1944
M. T. Reed
CLERK

# VIC SCHROEDER AGENCY

Omaha, Nebr.

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 26 day of May, 194 2, between the undersigned employer (hereinafter called the employer) and Nine (9) Men. (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of PAUL MOORHEAD. according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Cobblestone Ballroom<br>Storm Lake, Iowa. | Tue. June 30th, 1942 | From 9:00 PM. - 1:00 AM. |

PRICE AGREED UPON IS: 75.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer: Mr. Larry Geer

Accepted by Employer: [redacted]

Street Address: P. O. Box No. 5

Accepted: [redacted] (Orchestra Leader)

City or State: Fort Dodge, Iowa.

By: Bonnie Parsons (Representatives of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1290, Omaha, Nebraska

No. 8154 A

Plaintiffs' Exhibit B-16.
Filed In U. S. District Court December 13, 1944.

217

Ex B 11
12/11/44 HEB

VSA

THE SCHROEDER AGENCY

FILED
DEC 1 1944
C.L.R.B.

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 25 day of June, 194 2 between the undersigned employer

(hereinafter called the employer and by the undersigned representative. Nine (9) Men. (including Leader) musicians (hereinafter called employees) represented

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD. according to the following terms and conditions

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Exposition Park<br>Fort Dodge, Iowa. | Sat. July 11th, 1942 | From 9:00 PM. - 12)00 PM. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

on or before conclusion of above engagement.

To be paid
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opp site side of this contract or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Mr. Larry Ocas

Street Address P. O. Box No. 5

City or State Fort Dodge, Iowa.

Accepted by Employer

Accepted
(Orchestra Leader)

By Vic Schroeder
(Representatives of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1290, Omaha, Nebraska

77

No. 8352 A

Plaintiffs' Exhibit B-17.
Filed in U. S. District Court December 13, 1944.

221

| | | | |
|---|---|---|---|
| #255 | Wendell Hall | 506-10-3312 | $ 6.50 |
| #463 | Michael Moreno | 503-09-1257 | $ 5.00 |
| #75 | Bob Adamson | 485-01-1411 | $ 5.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 5.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 5.00 |
| #463 | Don Brehm | 506-05-9943 | $ 5.00 |
| #777 | Gene Anderson | 467-05-7642 | $ 5.00 |
| #75 | Warren Runyan | 434-18-7284 | $ 5.00 |
| #271 | Monroe Wilson | 480-20-408 | $ 5.00 |
| | | Trans. | $ 6.50 |
| | | Comm. | $ 7.00 |
| | | Profit | $ 10.00 |
| | | | $ 70.00 |

Plaintiffs' Exhibit B-19.
Filed in U. S. District Court December 13, 1944.

231

Plaintiffs' Exhibit B-17.
Filed in U. S. District Court December 13, 1944.



| | | | |
|---|---|---|---|
| #255 | Wendell Hall | 506-10-3312 | $ 7.00 |
| #463 | Michael Moreno | 503-09-1257 | $ 5.00 |
| #75 | Bob Adamson | 485-01-1411 | $ 5.00 |
| #443 | Shhldon Fonda | 072-16-0778 | $ 5.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 5.00 |
| #463 | Don Brehm | 506-05-9945 | $ 5.00 |
| #777 | Gene Anderson | 467-05-7642 | $ 5.00 |
| #75 | Warren Runyan | 434-18-7284 | $ 5.00 |
| #271 | Monroe Wilson | 480-20-408 | $ 5.00 |
| | | Trans. | $ 20.00 |
| | | Tax | $ 4.70 |
| | | Comm. | $ 10.00 |
| | | Profit | $ 18.30 |
| | | | $100.00 |

Ex B-18
12/17/44 HEB

FILED
DEC 1 1944
M. T. Reed
CLERK

# VIC SCHROEDER AGENCY

Omaha, Nebr.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra |

THIS CONTRACT for the personal services of musicians, made this 25 day of June, 194 2, between the undersigned employer (hereinafter called the employer and Nine (9) Men. musicians (hereinafter called employees) represented by the undersigned representative. (including Leader)

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD. according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Exposition Park<br>Ft. Dodge, Iowa. | Sun. July 12, 1942 | From 8:45 PM. - 12:15 AM. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer: Mr. Larry Geer

Street Address: P. O. Box No. 5

City or State: Fort Dodge, Iowa.

Accepted by Employer: .....

Accepted: .....
(Orchestra Leader)

By: Vic Schroeder
(Representatives of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1299, Omaha, Nebraska.

77

No. 8353 A

Plaintiffs' Exhibit B-18.
Filed in U. S. District Court December 13, 1944

225

Plaintiffs' Exhibit B-18.
Filed in U. S. District Court December 13, 1944
227

| | | | |
|---|---|---|---|
| #255 | Wendell Hall | 506-10-3312 | $ 8.00 |
| #463 | Michael Moreno | 503-09-1257 | $ 6.00 |
| #75 | Bob Adamson | 485-01-1411 | $ 6.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 6.00 |
| #463 | Don Brehm | 506-05-9943 | $ 6.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 6.00 |
| #777 | Gene Anderson | 467-05-7642 | $ 6.00 |
| #75 | Warren Runyan | 434-18-7284 | $ 6.00 |
| #271 | Monroe Wilson | 480-20-408 | $ 6.00 |
| | | Trans. | $ ----- |
| | | Tax | $ 5.60 |
| | | Comm. | $ 10.00 |
| | | Profit | $ 28.40 |
| | | | $100.00 |

Ex P-19
12/12/44
HEB

FILED
DEC 13 1944

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 25 day of June, 194 2 between the undersigned employer (hereinafter called the employer and by the undersigned representative Nine (9) Men. (including Leader) musicians (hereinafter called employees) represented

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD.

according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Cobblestone Ballroom<br>Storm Lake, Iowa. | Tue. July 14, 1942 | From 9:00 PM. - 1:00 AM. |

PRICE AGREED UPON IS $ 70.00 guaranteed; plus the privilege that the attraction may take (Terms and amount)

60% of gross receipts. (Gross earnings of the band not to exceed $100.00).

To be paid on or before conclusion of above engagement. (Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Plaintiff's Exhibit B-19.
Filed in U. S. District Court December 13, 1944.

Plaintiffs' Exhibit B-21.
Filed in U. S. District Court December 13, 1944.

| | | | |
|---|---|---|---|
| #255 | Wendall Hall | 506-10-3312 | $ 21.90 |
| #75 | Bob Adamson | 485-01-1411 | $ 5.00 |
| #75 | Warren Runyan | 434-18-7284 | $ 5.00 |
| #443 | Richard Fonda | 079-05-3020 | $ 5.00 |
| #250 | Eddie Lain | 511-18-4775 | $ 5.00 |
| #250 | David Rowland | 506-20-4566 | $ 5.00 |
| #405 | Lee Sanner | 349-14-7351 | $ 5.00 |
| #777 | Bernard Corrigan | 496-12-6364 | $ 5.00 |
| #260 | Ed Brauneau | 391-10-0725 | $ 5.00 |
| | | Trans. | $ 23.40 |
| | | Tax | $ 4.70 |
| | | Comm. | $ 10.00 |
| | | | $100.00 |

The band showed up with only 7 men; 3 sax, drum, bass, trumpet, & console strings. Paul Moorhead played trumpet, not shown on above list. Wendall Hall salary is definitely not a fact and doubt if he would make an affidavit that above is correct. Tomorrow's contract shows different salary for him. Paul told Esther Talcott that he and Wendall Hall were the only two men left in the band from theabove list, and all others listed were not with the band.

239

Mr. Larry Geer

P.O. Box No. 5

Fort Dodge, Iowa.

SIGNED TO Vic Schroeder Agency Box 1290 Oma

Accepted by Employer

Accepted

(Orchestra Leader)

By

(Representative of Employees)

Omaha, Nebraska

No. 8354

EX B-20
12/12/44
HZB

FILED
DEC 1 1944

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | A. Edw. Dunmar Orchestra

THIS CONTRACT for the personal services of musicians, made this 28 day of June 194 2 between the undersigned employer (hereinafter called the employer and by the undersigned representative. Nine (9) Men. (including Leader) musicians (hereinafter called employees) represented

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD. according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Alhambra Ballroom (Twin Lakes) near Rockwell City, Iowa. | Thur. July 16th, 1942 | From 9:00 P.M. - 12:30 A.M. |

PRICE AGREED UPON IS: $85.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her, or their) authority to do so and hereby assumes liability for the amount stated herein.

Filed in U. S. District Court December 13, 1944.
Plaintiffs' Exhibit B-20.

Name of Employer Mr. Larry Geer  Accepted by Employer

Street Address P.O. Box No. 8  Accepted (Orchestra Leader)

City or State Fort Dodge, Iowa.  By (Representatives of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1290, Omaha, Nebraska.

No. 8355 A

233

| | | | |
|---|---|---|---|
| #255 | Wendell Hall | 506-10-3312 | $ 36.40 |
| #75 | Bob Adamson | 485-01-1411 | $ 6.00 |
| #75 | Warren Bunyan | 434-18-7284 | $ 6.00 |
| #443 | Richard Fonda | 079-05-3020 | $ 6.00 |
| #250 | Eddie Lain | 511-18-4775 | $ 6.00 |
| #250 | David Rowland | 506-20-4566 | $ 6.00 |
| #405 | Leo Sanner | 349-14-7361 | $ 6.00 |
| #777 | Bernard Corrigan | 496-12-6364 | $ 6.00 |
| #260 | Ed Bruneau | 391-10-0725 | $ 6.00 |
| | | Trans. | $ --- |
| | | Tax | $ 5.60 |
| | | Comm. | $ 10.00 |
| | | | $100.00 |

The band showed up with only 7 men but hired Mary Bodenstein for piano, making total of 8. See last night's contract.

Plaintiffs' Exhibit B-22.

243

Filed in U. S. District Court December 13, 1944.

Plaintiffs' Exhibit B-20.
Filed in U. S. District Court December 13, 1944.

235

| | | | |
|---|---|---|---|
| #255 | Wendell Hall | 506-10-3312 | $ 8.00 |
| #463 | Michael Moreno | 503-09-1257 | $ 6.00 |
| #75 | Bob Adamson | 485-01-1411 | $ 6.00 |
| #443 | Sheldon Fonda | 072-16-0778 | $ 6.00 |
| #463 | Wm. Woltemade | 505-18-5236 | $ 6.00 |
| #463 | Don Brehm | 506-05-9943 | $ 6.00 |
| #777 | Gene Anderson | 467-05-7642 | $ 6.00 |
| #75 | Warren Runyan | 434-18-7284 | $ 6.00 |
| #271 | Monroe Wilson | 480-20-408 | $ 6.00 |
| | | Trans. | $ 12.50 |
| | | Tax | $ 5.60 |
| | | Comm. | $ 8.50 |
| | | Profit | $ 2.40 |
| | | | $ 85.00 |

Ex B-21
12/12/44
HEB

FILED
DEC 1 2 1944

# VIC SCHROEDER AGENCY

Omaha, Nebr

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pierer and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winter and his Orchestra | Eddy Duchin and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 16 day of September, 194 2 between the undersigned employer (Hereinafter called the employer) and Nine (9) Men. (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD.

according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Larsmer Ballroom<br>Fort Dodge, Iowa. | (over)<br>Sat. October 10, 1942 | From 9:00 P.M. - 12:00 P.M. |

PRICE AGREED UPON IS: 100.00 guaranteed. (Terms and amount)

To be paid on or before conclusion of above engagement. (Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist, against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Plaintiffs' Exhibit B-21: Filed in U. S. District Court December 13, 1944.

VSA
THE SCHROEDER AGENCY

FILED
DEC 1 1944

# VIC SCHROEDER AGENCY

Omaha, Nebr

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pierson and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Duncan and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 16 day of September, 194 2, between the undersigned employer (hereinafter called the employer) and Nine (9) Men. (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of PAUL MOORHEAD. according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Laramar Ballroom<br>Fort Dodge, Iowa. | Sunday, October 11, 1942 | From 8:45 PM. - 12:15 AM. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer: Mr. Larry Coer

Street Address: P. O. Box No. 5

City or State: Fort Dodge, Iowa.

Accepted by Employer

Accepted (Orchestra Leader)

By (Representative of Employers)

RETURN ALL COPIES SIGNED TO Vic Schroeder Agency Box 1209 Omaha Nebraska

No. 9035 A

Plaintiffs' Exhibit B-22.
Filed in U. S. District Court December 13, 1944.

241

Ex B-23
12/12/44
H.E.B

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DEC 13 1944
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# VIC SCHROEDER AGENCY

Omaha, Nebr

| Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Herman and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra |
|---|---|---|---|---|---|---|---|---|

THIS CONTRACT for the personal services of musicians, made this 16 day of September, 194 2, between the undersigned employer

Nine (9) Men.

(hereinafter called the employer and ..... (including Leader) ..... musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

PAUL MOORHEAD

according to the following terms and conditions:

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Laramar Ballroom<br>Fort Dodge, Iowa. | Sat. October 24, 1942 | From 9:00 PM. - 12:00 M. |

PRICE AGREED UPON IS $ 100.00 guaranteed.
(Terms and amount)

on or before conclusion of above engagement.

To be paid
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God; or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Plaintiffs' Exhibit B-23.
Filed in U. S. District Court December 13, 1944.

Name of Employer Mr. Larry Geer

Street Address P. O. Box No. [illegible]

City or State Fort Dodge, Iowa.

Accepted by Employer

Accepted (Orchestra Leader)

By Nadine Simmons (Representative of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1299, Omaha, Nebraska.

77

No. 9045 A

245

Plaintiffs' Exhibit B-23.
Filed in U. S. District Court December 13, 1944.
247

| | | | |
|---|---|---|---|
| #255 | Wendall Hall | 506-10-3312 | $ 21.90 |
| #75 | Bob Adamson | 485-01-1411 | $ 5.00 |
| #75 | Warren Runyan | 434-18-7284 | $ 5.00 |
| #443 | Richard Fonda | 079-05-3020 | $ 5.00 |
| #250 | Eddie Lain | 511-18-4775 | $ 5.00 |
| #250 | David Rowland | 506-20-4566 | $ 5.00 |
| #405 | Leo Sanner | 349-14-7351 | $ 5.00 |
| #777 | Bernard Corrigan | 496-12-6364 | $ 5.00 |
| #260 | Ed Bruneau | 391-10-0725 | $ 5.00 |
| | | Trans. | $ 23.40 |
| | | Tax | $ 4.70 |
| | | Comm. | $ 10.00 |
| | | | $100.00 |

Band appeared with only 7 men. Again no piano player. Paul Moorhead was with the band.

7

Ex. 12/12/44 R-2 44 12 B

FILED
DEC 1 2 1944
H. T. Reed
CLERK

# VIC SCHROEDER AGENCY

**Omaha, Nebr.**

Jimmy Barnett and his Orchestra | Gene Pieper and his Orchestra | Paul Moorhead and his Orchestra | Leo Pieper and his Orchestra | Skippy Anderson and his Orchestra | Ralph Slade and his Orchestra | Larry Harmon and his Orchestra | Hank Winder and his Orchestra | Eddy Dunsmoor and his Orchestra

THIS CONTRACT for the personal services of musicians, made this 13 day of January 194 4 between the undersigned employer (herinafter called the employer) and the undersigned representative (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of

according to the following terms and conditions,

| Place of Employment | Date(s) of Employment | Hours of Employment |
|---|---|---|
| Cobblestone Ballroom<br>Storm Lake, Iowa. | Tue. February 17, 1942 | From 9:00 P.M. - 12:30 A.M. |

PRICE AGREED UPON IS $ 70.00 guaranteed; plus the privilege that the attraction may take
(Terms and amount)

50% of gross receipts. (Gross earnings of the band not to exceed $100).

To be paid on or before conclusion of above engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accident to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Mr. Larry Geer

Street Address P. O. Box No. 5

City or State Fort Dodge, Iowa.

Accepted by Employer

Accepted (Orchestra Leader)

By Vic Schroeder
(Representatives of Employees)

RETURN ALL COPIES SIGNED TO: Vic Schroeder Agency, Box 1296, Omaha, Nebraska

77

No. 7131 A

Plaintiffs' Exhibit B-24.
Filed in U. S. District Court December 13, 1944.

249

Plaintiffs' Exhibit B-24.
Filed in U. S. District Court December 13, 1944.

251

| | | | |
|---|---|---|---|
| #463 | Michael Moreno | 503-59-1257 | $ 6.50 |
| #404 | Robt. Ropor | 507-14-6281 | $ 5.00 |
| #70 | Arthur Koterba | 508-16-8072 | $ 5.00 |
| #70 | Harry Lorenzen | 505-14-5524 | $ 5.00 |
| #70 | Wendall Hall | 506-10-3312 | $ 5.00 |
| #70 | Neil Whitesides | 507-03-5428 | $ 5.00 |
| #450 | Russell Sapp | 479-18-1007 | $ 5.00 |
| #70 | Leo Rex (Mel) Wheland | 506-09-5804 | $ 5.00 |
| #230 | Merlin Jungers | 484-09-4235 | $ 5.00 |
| TRANSPORTATION, TAXES, MISCL. & COMM. | | | $ 23.50 |
| | | TOTAL | $ 70.00 |

[fol. 315] Q. During the time that you have had your orchestra have you been interested in building up its reputation? A. Naturally.

Q. So that the orchestra will have public acceptance throughout the territory it plays? A. Yes.

Q. Were you during the year 1942 a member in good standing of the American Federation of Musicians?

A. I was.

Q. Were all of the sidemen of your orchestra during the year 1942 members in good standing in the American Federation of Musicians? A. They were.

Q. Was there any difference in the way your orchestra operated prior to June 1, 1941, and the way it operated afterward? A. No.

Q. And engagements were played in the same way; is that correct?

[fol. 316] A. That is right.

Q. Your relations with the sidemen were just the same?

A. Yes.

Mr. Roberts: I believe that is all of the direct examination.

Cross-Examination.

By Mr. Harold D. Cohen:

Q. Mr. Moorhead, when was the first engagement which you performed at the Crystal Ballroom?

A. When was the first I ever played there?

Q. Yes? A. I could not tell you.

Q. Well, was the first time on January 18, 1942?

A. That was not the first time nor the last. That was just one of the times.

Q. Now the contract for the engagement of January 18, 1942, was entered into June 25, 1941; is that right?

A. It must be if it says so there.

Q. Was that contract signed by you or someone acting in your behalf?

A. I don't think I signed it.

Q. It appears to have the signature of Mr. N. Timmons?

A. A lady.

Q. Was she authorized to make contracts on your behalf?

A. Yes; she was employed by the Vic Schroeder Agency.

[fol. 317] Q. Did you authorize the making of the contract for the engagement of yourself and the sidemen of your orchestra?

A. Not personally, but she worked for the agency.

Q. You authorized the agency?

A. That is right.

Q. It is also true with the other engagements which you performed at Larry Geer Ballrooms was contracted for by an agency authorized by you to contract for you and the sidemen of your orchestra; is that correct?

A. That is right.

Q. When did this contract of June 25, 1941, come to your attention after it was signed by Timmons?

A. It would not come up until ten days previous to the engagement when they are mailed out to the band.

Q. You knew at that time that you had this contract to perform at the Crystal Ballroom?

A. You knew a long time ahead that you were going to be there, but you never see the contract until ten days before.

Q. When you got the contract I assume you read it; is that right?

A. I read very little of it; how much and when.

Q. You did not repudiate the contract, did you?

Mr. Charlton: Objected to as calling for an opinion and conclusion of the witness.

The Court: Sustained. (Defendant excepts).

[fol. 318] Q. Did you tell anyone that you would not be bound by any of the terms of the contract?

A. No.

Q. When you performed at the Crystal Ballroom and the Larry Geer Ballrooms was it your intention to perform according to the terms of the contract, and according to the rules and regulations of the American Federation of Musicians?

A. Naturally that is your intention.

Mr. Cohen: All right. No further questions.

Cross-Examination.

By Mr. Joseph A. Padway:

Q. Mr. Moorhead, I notice on a number of these exhibits, I won't refer to all of them, but I will pick out one or two at random, on the reverse side, let us take Exhibit B-6 which is an operating contract of the 13th day of January 1942 for nine men and $100.00 guaranty, and that is the one for the engagement of Sunday, February 22, 1942, from 8:45 to 12:15 designated hours of employment, Laramar Ballroom, Ft. Dodge, Iowa, place of employment, on the matter of transportation, taxes, miscellaneous and commission you have it set out at $44.00. In another instance you have transportation, taxes, commission and miscellaneous $53.50. Transportation is the [illegible]s you have [fol. 319] described?

A. Transportation is at the time figured one cent a mile a man.

Q. That was because it was fixed by rule and minimum charge? A. You could not travel for that.

Q. That was the minimum you could travel for under the union rules? A. Yes.

Q. Have you ever read this Constitution, or parts of it anyway?

A. I would say some.

Q. You know that rule is set forth on page 147: "Transportation charges per man must be made at not less than the lowest rate by available public transportation service, or of not less than one cent per mile per member if transportation is by privately owned automobile or other conveyance. If transportation for member or members is by privately owned automobile or bus it shall be unlawful for any leaders to accept or any members to fulfill an engagement which necessitates traveling by auto or bus a distance in excess of 400 miles within 24 hours." You were familiar with that rules, were you?

A. Yes, sir.

Q. You observed it, did you? A. Yes.

[fol. 320] Q. In here you show transportation, commission, miscellaneous expenses and taxes. Is that the tax, the one cent tax that the employee is liable to the Government for and that you have to pay?

A. Well, don't show that it was. That is what the secretary has put there and I imagine the tax might be con-

strued to be the ten percent levied by the Local at Ft. Dodge?

Q. That is right. There is a rule in the union that ten percent is to be added and later distributed to the men in the city where you come to play because you displace the Local men? A. To the National.

Q. It is not what I was trying to get out. It is not the Social Security Tax of the employer?

A. I would not think so.

Q. I had an idea without asking you. I am glad you set me right. So you have explained all these tax items is just the ten per cent tax that has nothing to do with Social Security?

A. I imagine that is right.

Q. That appears in a good many of your contracts here and there. I notice too in every one of these contracts that have been offered by Mr. Roberts that they are filled out with the number of men who play, and the amount of money they received; is that right? You have looked at [fol. 321] that, haven't you?

A. I doubt if I ever seen that outside of right here. That is probably somebody else's copy.

Q. Well, look at that now. A. Things we paid.

Q. You mean the rate?

A. No. The band showed up with only seven men.

Q. When you showed up with seven men you only got paid for seven? A. He hired Mary Bodenstine.

Q. In the contract when you agree to bring ten or eleven men you have to bring that many or substitute.

A. Yes, but suppose you can't get a substitute? That is when he hired Mary.

Q. Now who fills out this reverse side, this information? A. The Agency.

Q. The agency fills it out, does it? A. Yes.

Q. You did not do it personally then? A. No.

Q. Or at least no member of your orchestra?

A. No.

Q. But it was done by the agency? A. Yes.

Q. In fact the Vic Schroeder Agency furnishes these blanks?

[fol. 322] A. That is right.

Q. This exhibit on which you have set forth the itemized list of operating expenses, and referred to as B-1, also is furnished by the agency? A. Yes.

Q. It is a sort of an accounting you made so that you may know who was paid, what they were paid, what they were paid for, and what was used for transportation?

A. That is right. They are helpful for income tax.

Q. I suppose the Government appreciates that. My good friend failed to read that the bus had had deodorants, and you spent 25 cents for that.

Mr. Roberts: It is in there.

Mr. Padway: I beg your pardon.

Q. I notice that you have a number of items among other things, a number of items, let's look at it together, Social Security and Unemployment tax; you see that?

A. Yes.

Q. But it shows it blank, which would indicate you did not pay Social Security Tax or Unemployment tax. The fact of the matter is you did not pay any Social Security Tax on any of these engagements after Form B was used?

A. No, not with those dates. There was none after June 30, 1941.

Q. Now, did you hear Mr. Menke testify?

[fol. 323] A. Yes

Q. You heard his testimony as to the rules of the union respecting the leader must receive scale, the sidemen must receive scale, and the transportation and other expenses must be so computed in the scale as to leave scale; does that apply to you too?

Mr. Charlton: Objected to as calling for the opinion and conclusion of the witness; and, of course, for the further reason that it requires him to be a mind reader as stated in my previous objection, but no objection on account of the general nature of the question.

The Court: Overruled. You may answer. (Plaintiffs except.).

(Question read by the reporter.)

A. Naturally it applies to me. We always cover it. We never play—I stop there.

Q. You stopped with it did apply to you; is that correct?
A. Yes.

Q. I don't want to put the words in your mouth, but are you familiar with the rules of the union that require you as a leader in fixing the price, or your agency in fixing the price for the employment of yourself and these men, that you must fix a price which will give the sidemen a minimum wage fixed by the union in the locality, and add to that the [fol. 324] expense of transportation, anticipated miscellaneous expenses, and so forth?

A. I am very aware of all of that.
Q. You do that in every engagement; is that right?
A. Yes.

Redirect Examination.

By Mr. Thomas B. Roberts:

Q. During 1942 were you paying your men above the union scale?

A. As the year went on it went much higher in January.

Q. As the year went on you paid them higher?
A. Yes.
Q. You paid them higher than the union scale?
A. Yes.

Mr. Roberts: That is all.

Witness Excused.

12:00 noon, court adjourned until 2:00 p. m., today, December 12, 1944.

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Afternoon Session, December 12, 1944;

2:00 O'clock.

[fol. 325] WARREN L. LAWSON, called as a witness on behalf of the plaintiffs, and first duly sworn by the Clerk, testified as follows:

Direct Examination.

By Mr. Thomas B. Roberts:

Q. Will you give your name to the reporter?
A. Warren L. Lawson.
Q. Are you generally known by any other name?
A. Yes; "Doc" Lawson.

Q. Where do you live, Mr. Lawson?
A. Marshalltown, Iowa.
Q. Did you come here in response to a subpoena?
A. Yes.
Q. Your name ever identified with a band orchestra?
A. Yes.
Q. Just what was the name of the orchestra?
A. "Doc" Lawson's Orchestra.
Q. Can you tell us when that was that this orchestra was assembled? A. About 1921.
Q. And who assembled it? A. I did.
Q. Can you tell us the place?
A. Iowa City.
[fol. 326] Q. Has your orchestra been known since then as "Doc" Lawson's Orchestra?
A. Yes.
Q. You do not have an orchestra at the present time, do you? A. No, sir.
Q. During the period that the orchestra was in business I presume its performances consisted mainly in playing popular dance music?
A. Yes, sir.
Q. Tell the court what types of establishments or organizations that your orchestra played music for?
A. Theatres, clubs, Ballrooms, civic organizations, and various things like that.
Q. Most generally what is known as one night stands?
A. Yes, sir.
Q. Can you tell us who solicited these engagements?
A. I did.
Q. Did you ever send out any publicity matter?
A. Yes, sir.
Q. I hand you what the reporter has market Exhibit B-25, and ask you if that is a piece of publicity matter that you sent out? A. Yes, sir.
Q. That recites: Doc Lawson, Doctor of [Rythm], and His Orchestra?
[fol. 327] Q. "Midwest's Greatest Dance Band"?
A. Yes.
Q. Down at the bottom, "Available for engagements in the midwest. Write, wire, or 'phone, Marshalltown, Iowa". Is that right? A. Yes, sir.
Q. Did you pay for this publicity? A. Yes.

Q. Did you pay for the placard?
A. Yes, sir.

Mr. Padway: Is that you on that picture?

A. Yes.

Mr. Roberts: The plaintiffs offer in evidence Exhibit B-25.

Mr. Padway: You are a doctor of [rythm]. Is that the way you got the name "Doc"?

A. No, sir. That is just a nickname.

The Court: It will be admitted in evidence, no objection.

# Doc LAWSON

"Doctor of Rhythm"
and His Orchestra

# The Midwest's Greatest Dance Band

Plaintiffs' Exhibit B-26.
Filed in U. S. District Court December 13, 1944.

263

Exhibit B-26
12-12-44
HEB

FILED
DEC 13 1944
N. T. Reed
CLERK

[fol. 330] Q. One further question, Mr. Lawson: You sent numerous placards such as Exhibit B-25 to various establishments? A. Yes, sir.

Q. I hand you Exhibit B-26. Is that a mat?

A. It is a mat. I can't tell what it is.

Mr. Roberts: It is stipulated that Exhibit B-26 is a picture mat of Doc Lawson playing at an electric organ.

Q. Can you tell what that mat was used for?

A. For newspaper work advertising.

Q. Advertising the orchestra?

A. In the places where we played, that is right.

Q. Did you furnish that mat to the establishments?

A. Yes.

Mr. Roberts: The plaintiffs at this time offer in evidence Exhibit B-26.

Mr. Padway: No objection.

The Court: It is admitted.

[fol. 331] Q. In what parts of the country did your orchestra play its engagements during the time of its existence? A. About thirteen States.

Q. Most of them here in the middle west?

A. Yes.

Q. Did you ever play over the radio?

A. Yes, sir.

Q. Now, do you recall, Mr. Lawson, whether your orchestra played at the Elhambria Ballroom at Twin Lakes, Iowa, on July 4, 1942? A. Yes, sir.

Q. Who was the operator of that place, or Ballroom, or establishment at that time?

A. Larry Geer.

Q. I will hand you what the reporter has marked Exhibit B-27 and ask you if your signature appears any place on that instrument? A. Yes, sir.

Q. And that is your signature of your name, Doc Lawson? A. Right.

Q. Is Exhibit B-27 dated May 27, 1942, for an engagement by Doc Lawson's orchestra—a contract for an engagement at the Elhambria at Twin Lakes on July 4, 1942?

A. Yes, sir.

Q. What do you recall as to how that particular engagement was booked, Mr. Lawson?

A. I imagine by letter.

Q. I hand you what has been marked by the reporter as Exhibit B-28. Do you find that that is a letter by you dated May 22, 1942, to Larry Geer?

A. Yes, sir.

Q. That is the letter where you said: "July 4th is open. Was booked in my home town, but they waited too long to get concessions, etc., and so aren't going to celebrate. Want $200 for the date. Let me know right away". Is that in the letter? A. Yes, sir.

[fol. 332] Mr. Roberts: The plaintiffs offer in evidence Exhibit B-27.

The Court: No objection. It is admitted.

Dues

EXHIBIT B27

Contract Blank 12-12-44

# Marshalltown Federation of Musicians

FILED

DEC 13 1944

LOCAL No. 178, AMERICAN FEDERATION OF MUSICIANS

MARSHALLTOWN, IOWA

M. F. Reed

CLERK

THIS CONTRACT for the personal services of musicians, made this 24th day of May, 1942

between the undersigned employer (hereinafter called the employer) and 10 (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the

leadership of Doc Lawson, according to the following terms and conditions:

Plaintiffs' Exhibit B-27.
Filed in U. S. District Court December 13, 1944.

267

Place of employment Gaar Ballroom Alhambra, Twin Lakes

Date(s) of employment July 4th, 1942.

Hours of employment ~~XXXXXXXXXXXX~~ 9:00 P.M. to 12:30 A.M..

Price agreed upon $ 200.00
(Terms and amount)

To be paid Immediately after engagement.
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer _____ Accepted by Employer Gary Gaar

Street Address _____ Accepted Lee Lawson
(Orchestra Leader)

City or State _____ By "Doc" Lawson
(Representatives of Employees)

Phone _____

FORM B

(1) Printed in U. S. A.

[fol. 334] Mr. Roberts: The plaintiffs offer in evidence plaintiffs Exhibit B-28.

Mr. Padway: No objection.

The Court: It is admitted.

# Doc LAWSON

AND HIS ORCHESTRA .... BOX 99 .... MARSHALLTOWN, IOWA

May 22nd, 1942.

EXHIBIT B-28
12-13-44
HEB

FILED
DEC 13 1944
H. T. Reed
CLERK

Mr. Larry Geer
P.O. Box # 5
Fort Dodge, Iowa.

Dear Larry:-

July 4th is open--was booked in my home down, but they waited to long to get concessions, etc., and so arent going to celebrate..Want $200. for the date--let me know right away...

Regards,

Doc L.

"Doc" Lawson.

Plaintiffs' Exhibit B-28.
Filed in U. S. District Court December 13, 1944.

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[fol. 336] Q. Incidentally, Mr. Lawson, did you prepare the printed form Exhibit B-27?

A. No, sir.

Q. Can you tell the court where you obtained that form?

A. Musicians Union, Marshalltown, Iowa.

Q. That is a Local of the American Federation of Musicians? A. Yes, sir.

Q. Can you tell the court what is the customary name of the sidemen in an orchestra? I will withdraw that. Just tell the court about the sidemen in an orchestra—what they are?

A. They are just musicians.

Q. Musicians other than the leader, is that right?

A. That is right.

Q. Incidentally you were a leader of the orchestra during the time that [is] was in existence; is that right?

A. Yes.

Q. Who selected the sidemen in your orchestra who played the engagement at the Elhambria Ballroom, July 4, [fol. 337] 1942? A. I did.

Q. What can you tell us as to whether or not these sidemen were selected in advance of the date of the contract which was May 24, 1942?

A. I didn't get the question.

Q. What can you tell us as to whether you selected the men who played the engagement in advance of the date of the contract, May 24, 1942?

A. Yes, I did.

Q. I will hand you what the reporter has marked Exhibit B-29; does your signature appear anywhere thereon?

A. Yes, sir.

Q. Is that a letter dated December 19th, 1941, addressed to Mr. Larry Geer, Post Office Box No. 5, Fort Dodge, Iowa, from you?

A. Yes, sir.

Q. In this letter you stated: "I fired my whole band, and am starting out December 20th with all new men but two, and an entirely different style. As long as I am going commercial I might as well go the whole way. Have all my new men hired and rehearsing six days to start out on." What can you tell the court as to whether some of the men

you referred to in this letter were some of the men who played the engagement on July 4, 1942?

A. I could not answer that. I don't know.

[fol. 338] Q. Some of them might have been?

A. Might have been.

Q. You wrote the letter Exhibit B-29, is that right?

A. That is right.

Q. Are the facts stated in there true?

A. Yes, sir.

Q. Now in that letter I notice that you stated: "Am playing my last week with my present band and starting out December 20th with the old Dixieland band, a duplication of what I had three years ago when I was making the money. The people here want two tempo and I have been forcing four beat on them, or trying to rather, and not doing so well, so am going back to a duplication of the band I had three years ago, suit cases of novelties, breaking fiddles, burning straw hats, etc." What can you tell us as to whether you were referring to a style of orchestra performances there in those words?

A. Well, the letter is almost self-explanatory, because we were not getting much work with the type of band we had, so had to change.

Q. It was this type of Dixieland [rythm], the style that you used at the Elhambria Ballroom July 4th?

A. Yes, sir.

Q. You picked musicians that you thought would accomplish or bring about that style; is that right?

A. Yes, sir.

[fol. 339] Q. I presume you picked music arrangements for that purpose? A. Yes, sir.

Q. Incidentally, did you have a music library at that time? A. Yes, sir.

Q. And that is an arrangement library? A. Yes.

Q. Who paid for that library? A. I did.

Q. It was your personal property?

A. That is right.

Q. Now you mentioned something in this letter about firing your old band. I take it from that, that when you wanted to get rid of a sideman you told him his services were no longer needed, is that right?

A. With two weeks notice, yes sir.

Q. You refer to two weeks notice, and you refer to what, some requirement? A. That is right.

Q. You mean for the discharge of a sideman?

A. If he is working on a weekly basis, yes.

Q. Some of your men were during this period?

A. Yes.

Q. And those men, did you pay them a weekly wage?

A. Some of them, yes.

[fol. 340] Q. They were working on a weekly basis?

A. Yes.

Q. Did your weekly wage vary according to the number of engagements, or did you just pay them a flat sum?

A. That is right.

Q. Just paid them a flat sum, is that true?

A. Yes.

Q. That was during the time, and was true on July 4, 1942? A. That is true.

Q. On the occasion of the engagement of your orchestra at the Elhambria Ballroom who determined the order of the different dance pieces played, the dance selections during the evening? A. I did.

Mr. Roberts: I want to offer in evidence at this time, Your Honor, Exhibit B-29.

Mr. Padway: No objection.

The Court: It is admitted.

# DOC LAWSON

AND HIS ORCHESTRA .... BOX 99 .... MARSHALLTOWN, IOWA

December 9th, 1941

Mr. Larry Geer
P.O. Box # 5
Fort Lodge, Iowa.

Dear Larry:-

Just returned from an 8 day trip and found your letter waiting. Can arrange the January 18th. Price $100. ten men. It is now booked at the Plamor Ballroom in K.C., but have just had to change the 17th so that I would have a 200 mile drive. If you want the 18th, let me know at once , so that I can make arrangements.

Am playing my last week with my present band and starting out December 20th with the old Dixieland band, a duplication of what I had three years ago when I was making the money. The people here want two beat tempo and I have been forcing four beat on them, or trying to , rather and not doing so well at it, so am going back to a duplication of the band I had three years ago, suit cases of novelties, breaking fiddles, burning straw hats, etc.....I fired my whole band and am starting out Dec 20th with all new men, but two, and an entirely different style. As long as I am going commercial, I might as well go the whole way. Have all my new men hired and rehearsing six days to start out on.

Let me know at once if you wish January 18th.

Kindest Regards,

"Doc" Lawson

"Doc" Lawson.

Plaintiff's Exhibit B-29.
Filed in U. S. District Court December 13, 1944.

[fol. 342] Q. Who determined the instrumentation of your orchestra during 1942? A. I did.

Q. Did the orchestra have a theme song?

A. Yes, sir.

Q. You selected that; is that correct?

A. That is right.

Q. Was it played at the beginning of the engagement?

A. No.

Q. At the end? A. Yes.

Q. At the end. Incidentally, Mr. Lawson, there was some reference to your being seated at an organ in this mat. You played an organ at that time? A. Yes, sir.

Q. And still do, of course? A. That is right.

Q. You played the organ and also led the orchestra too, is that right? A. That is right.

Q. Did you use the organ in connection with developing the tempo of the orchestra any way in starting or considering the orchestra music? A. No.

Q. How did you start the music? A. With my foot.

Q. A beat of some kind, a one-two?

A. That is right.

Q. And then during the course of the performance you would I suppose, regulate the volume by some signal to the orchestra; is that right? A. Once in a while.

[fol. 343] Q. Once in a while. Did you have any vocalists on the occasion of this engagement? A. No, sir.

Q. Did your orchestra have any special attire on the date of July 4th you played at Elhambria?

A. Yes, sir.

Q. Did you have anybody that selected that?

A. Yes, sir.

Q. You selected it? A. Yes, sir.

Q. Now did you use any music racks during the playing of the engagement on July 4th at the Elhambria Ballroom? A. Yes, sir.

Q. Who owned those? A. I did.

Q. And you brought them to Ft. Dodge with you, or Twin Lakes? A. Yes.

Q. Did your orchestra use a public address system during the performance of this engagement? A. Yes.

Q. Do you know whose that was; who furnished it?

A. We used two that night.

Q. Do you know who furnished the two?

A. I furnished one and L. Geer furnished the other one.

Q. Now just tell us how your orchestra travelled to [fol. 344] Twin Lakes for this engagement?

A. Sleeper bus.

Q. Sleeper bus? A. Yes, sir.

Q. Did you own that bus at that time? A. – Yes, sir.

Q. Have your name on the outside of it?

A. That is right.

Q. Doc Lawson's Orchestra? A. That is right.

Q. How many men would that bus sleep; how many men could sleep in the bus? A. Fourteen.

Q. Had some [births] of some kind in there?

A. That is right.

Q. That bus, I take it, was registered in your name?

A. Yes, sir.

Q. Now who paid for the gas, oil and tires on the bus?

A. I did.

Q. What can you tell us as to whether you had a special garage at your home in Marshallto n which kept the bus? A. That is right.

Q. Now did you rehearse, the band rehearse for six days?

A. I take it from that you mean from time to time did we rehearse?

[fol. 345] Q. Your orchestra? A. Yes.

Q. And tried to have the orchestra produce certain desired musical effects; is that right?

A. That is right.

Q. That is, the musical effect you wanted, or the style?

A. That depends on what the people want.

Q. You tried to develop the style the people would want, is that right? A. Yes, sir.

Q. In your home in Marshalltown what can you tell us whether you had a special room there for conducting rehearsals, recreation room?

A. Yes, a recreation room where we rehearsed.

Q. Now I note that the price for the engagement stated in the contract Exhibit B-27 is $200.00?

A. That is right.

Q. And can you tell us how that amount was paid, who received it? A. It was paid to me.

Q. Did you put in it a bank account? A. No, sir.

Q. Can you recall at this time whether you had anything left, any balance remaining after the expenses of that engagement?

A. I could not remember that now.

[fol. 346] Q. If there was a balance who received it—if there was any balance remaining? A. I did.

Q. I take it some years before, when you referred to the fact that you were making the money in Exhibit B-29, you had some profitable engagements in that period?

A. Yes, sir.

Q. Were there ever occasions when you had a loss?

A. Oh, yes.

Q. Who stood the loss? A. I did.

Q. Now, Mr. Lawson, were you during the year 1942 a member in good standing of the American Federation of Musicians? A. Yes, sir.

Q. And were all of the sidemen in your orchestra during 1942 members in good standing in the American Federation of Musicians? A. Yes, sir.

Q. Was there any difference in the way your orchestra operated after July 1st, 1941, as compared with the way it operated before that date?

A. Ask that question again.

Q. Was there any difference in the way your orchestra was operated? A. No.

Q. Just the same after June 1st 1941 as before?

[fol. 347] A. That is right.

Q. Your dealings with the sidemen the same?

A. Yes, sir.

Q. And with the Geers, were they the same, your dealings with the Geers? A. The same way, yes.

Q. You mentioned something here in a letter about your paying the men; what can you tell the court as to whether you paid above the union scale during 1942?

A. Away above the union scale.

Q. Away above—

A. Away above the union scale.

Q. I hand you what the reporter has marked Exhibit B-30; is that another letter signed by you to Mr. Larry Geer? A. Yes, sir.

Q. Dated October 12th, 1942? A. Yes, sir.

Q. You wrote that letter, did you not? A. Yes, sir.

Q. And that is a letter in which you stated: "I'm fighting a $365.00 per week payroll right now." Is that correct? A. Yes sir.

Q. Are the statements in that letter true? A. Yes, sir.

[fol. 348] Mr. Roberts: I will offer in evidence at this time, Your Honor, the plaintiff Exhibit B-30.

The Court: If there is no objection it may be admitted.

# Doc LAWSON

AND HIS ORCHESTRA .... BOX 99 .... MARSHALLTOWN, IOWA

October 19th, 1942.

Mr. Larry Geer
P.O. Box #5
Fort Dodge, Iowa.

Friend Larry:-

Just got back from a trip and found your letter waiting. I dont know what to plan until I find out how much gas we are going to get. It will be tough on you and the bands also to work the nine day plan, as you told me, as the men are costing so darn much--I'm fighting a $365. per week payroll right now, and it will probably be tougher later on, as there are only a handful of men left, and they want double what they are worth, so will write you just as soon as I can find out enough to make plans.....

Chuck Coffee should be a good bet for you, if you can keep him sober---I imagine local bands will have to do the jobs in the localities where they are, if there isnt enough gas, and dont see how a road band can operate playing 4 and 5 nites a week, as as soon as the salaries stop, they go into defense work at big money--there arent any musicians left in the Tri-Cities---they are all working in the Rocklsland Arsenal, and that will run about the same in all the cities of any size. Sure hope Oklahoma raises enough hell to stop the gas rationing.

Well, will close for this time---we will just have to see what the hell happens--I'm afraid to plan very much, but just keep plugging away----of course this has to happen just when I get a fine band together...

Regards,

Doc Lawson

"Doc" Lawson.

P.S. Offer you December 25,26,27 at $450. (ten men) Dec. $250. for the Dec. 25th date.

Plaintiffs' Exhibit B-30.
Filed in U. S. District Court December 13, 1944.

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[fol. 350] Q. Incidentally, Mr. Lawson, the amount you paid the men during the year 1942, was the amount you determined; is that right? You mentioned the pay roll.

A. Yes, determined according to the union scale and over. At that time it was necessary to pay more to get the men.

Q. And you determined whatever amount that was?

A. They did.

Q. But you met their terms, is that right?

A. That is right.

Q. During the period that you had the orchestra, I believe you started back in the earlier twenties, did you try to develop a good reputation for musical entertainment? A. I tried to, yes.

Q. So your orchestra would have acceptance in these thirteen States you played in at various times?

A. Well, there was no intention of doing road work in 1921 at that time.

Q. Later on you tried to have public acceptance?

A. That is right.

Q. To develop the same showmanship that you accomp-
[fol. 351] lished; is that correct? A. Yes, sir.

Mr. Roberts: I believe that is all of the direct examination.

Cross-Examination.

By Mr. Harold D. Cohen:

Q. How long did you say you had been in the music business? A. Professionally?

Q. Professionally? A. Since 1921.

Q. Now in 1942 and '41, you got together a new aggregation of musicians to play as Doc Lawson's orchestra? A. A new bunch of men, you say?

Q. Yes? A. Yes, I changed men.

Q. Are you sufficiently familiar with the socalled custom among musicians to know whether it is the understanding that the leader of an orchestra is to get more for his services than the sidemen? A. Yes, sir.

Q. Is it not true, Mr. Lawson, that it is understood among musicians that the leader will bear certain expenses such as library, transportation and the like?

A. Yes, sir.

Q. And is it not true also that before an arrangements [fol. 352] such as that can be terminated either by you or by the sidemen that two weeks notice must be given between themselves? A. Yes, sir.

Q. So that if a sideman wants to leave an aggregation of musicians he has to notify you two weeks in advance; is that correct? A. Yes, sir.

Q. When you booked the engagement at Larry Geer Ballrooms was the price fixed with reference to the number of men whom you would bring to play at that engagement?

A. Yes.

Q. So that if you brought a greater number of men the price would be higher, and if you brought a fewer number it would be lower?

A. It usually worked out that way.

Q. Regardless of that you would agree that the remuneration would be at least sufficient to pay the union scale for the sidemen and the union scale for the leader, is that correct?

A. Yes, sir.

Q. You signed this contract for the engagement of July 4, 1942, yourself, did you not?

A. Yes, sir.

Q. Did you read the contract when you signed it?

[fol. 353] A. Yes, sir.

Q. You knew what was in the contract?

A. Yes, sir.

Q. Did you ever protest to Mr. Geer against signing that contract? A. No, sir.

Q. You signed it with full knowledge of its terms; is that correct? A. Yes, sir.

Mr. Cohen: I have no further questions.

Cross-Examination.

By Mr. Joseph A. Padway:

Q. Doc—I can call you Doc, can't I?

A. Yes, sir.

Q. You can call me Joe, if you want to. Doc, you have been in the band business for a long time, since 1921, I think you said. You have played some pretty long engagements out there, haven't you?

A. Yes, sir.

Q. What is the longest engagement that you recall that you played at any one time?

A. With the orchestra or by myself?

Q. With the orchestra? A. I can't recall.

Q. What? A. I can't recollect what the longest one was.

[fol. 354] Q. Ever play at a hotel? A. Some, yes.

Q. Ever play at a hotel for a month? A. No.

Q. Ever play any place as long as a month in all of those years?

A. Paramount Theatre here in Des Moines.

Q. How long did you play there?

A. Nearly three years.

Q. Three years? A. Yes, sir.

Q. Continuously? A. Yes, sir.

Q. With an orchestra? A. Yes.

Q. Whose orchestra?

A. Local Des Moines musicians.

Q. Were you the leader? A. No, sir.

Q. Who was? A. The master of ceremonies.

Q. What was his name?

A. Well, Charley Agnew, and Al Morey.

Q. Did that leader conduct his work or perform his work any different than you performed your work with your [fol. 355] band? A. Yes.

Q. What was the difference in the performance of the work?

A. Well his conduct was director of the band for the stage shows and was a band member, and most of my work has been strictly dance work when I had my band.

Q. So that the difference that he rendered music and directed music for the stage shows, whereas you did it for dances?

A. Practically the same.

Q. He would wield a baton, would he not?

A. Yes.

Q. He would sign the musicians, would he not?

A. No.

Q. He would seat the musicians?

A. They would just come up there and set down.

Q. He would place the first five men?

A. I don't understand what you mean now.

Q. He would arrange them?

A. Yes.

Q. That was done for the purpose of producing the best form of music; is that right? A. That is right.

Q. He would give the hours designated by the show house for the men to come and leave?

[fol. 356] A. Yes.

Q. It was fixed for him the same as it was for you in your contract? A. Yes.

Q. And he would rehearse his band, would he not?

A. Yes, sir.

Q. In the same manner you rehearsed yours?

A. Yes.

Q. And you as a sideman, and the extras, would be rehearsed by him? A. Yes.

Q. So to all intents and purposes the direction of the music in the music pit is no different than the production of dance music?

A. Except different type is all.

Q. That would also be true, the men in the pit in grand opera would produce music different than would a burlesque show? A. Yes.

Q. But the method or manner of doing the work is the same? A. Yes.

Q. And that is because of nature and employment of the musician? A. Yes, sir.

Q. The music is produced in that way?

[fol. 357] A. Yes, sir.

Q. How did you receive your pay at that time—from the leader? A. No.

Q. From the house? A. Yes.

Q. Who got the musicians together?

A. The contractor.

Q. Who was the contractor, these leaders?

A. No, sir.

Q. Who then?

A. Barney Barnard was the contractor.

Q. Barney Barnard was the contractor who got the contract for the band? A. Yes.

Q. When you went down in the theatre pit you were trained and rehearsed by that leader?

A. By the leader, not by the contractor.

Q. By the leader? A. Yes, sir.

Q. Who would hire an additional employee if he were needed? A. The contractor.

Q. Would the leader have nothing to say about that?

A. Not a thing.

[fol. 358] Q. He would have to take whoever the contractor sent there? A. That is right.

Q. Who did the firing? A. The contractor.

Q. Where was the contractor located?

A. He played in the band.

Q. He played in the band? A. Yes.

Q. What was his name?

A. The contractor was Barney Barnard.

Q. He was a musician? A. Yes.

Q. Then the leader was working under his direction, is that true? A. No.

Q. Under whose direction was he working?

A. Well, the theatre does a little different than in dance work because you take a contractor like this theatre up here he hired the men and they import their master of ceremonies from the circuit.

Q. Who is "they"?

A. The theatre managers.

Q. Then the managers import the master of ceremonies, and the contractor gets the band together?

A. That is right.

[fol. 359] Q. And the leader rehearsed them, that is right?

A. That is right.

Q. And the contractor hired them and fired them, you say? A. Yes, sir.

Q. And yet the wages were paid by the house, is that right? A. Yes, sir.

Q. Directly to the men?

A. That is right.

Q. And the house decided as to how many musicians it would want? A. Yes, sir.

Q. And it communicated that to the leader, didn't it?

A. Yes.

Q. And if the house wanted to fire a man they would indicate it to the leader and he would do the firing?

A. No; the contractor.

Q. I mean the contractor? A. Yes.

Q. The house would indicate to the contractor and the contractor would fire? A. That is right.

Q. In other words, the contractor stood really in the shoes of the leader so far as the management was concerned in the dance bands? A. That is right.

[fol. 360] Q. The only difference as I see, as you explain, between the traveling dance band, and the theatre band, as in this instance some fellow by the name of—

A. Barney Barnard—

Q. —he was the fellow that did the bossing, so to speak, with the consent and approval of the theatre?

A. That is right.

Q. You were a member of that band and know this from experience? A. Yes, sir.

Q. In twenty some odd years that you have traveled around the midwest you have an idea of how bands operate around the country? A. Yes, sir.

Q. You know there is a Chicago Opera Company and a Metropolitan Opera Company in the City of Chicago and the City of New York? A. Yes, sir.

Q. You know they have some musicians too, don't they? A. Yes, sir.

Q. You know it to be a fact, or don't you know it to be a fact that the Metropolitan Opera Company pays its musicians directly?

Mr. Roberts: Objected to as incompetent, immaterial and irrelevant and not cross-examination.

[fol. 361] The Court: Sustained. (Intervener excepts.)

Q. Well now the work, so far as the opera is concerned, I mean the music is, except for the type of music, rendered in the same manner as your music was rendered in this theatre in Des Moines?

Mr. Roberts: The same objection.

The Court: I don't know what it has to do with the case. We are interested in dance band orchestras and their organization and not something else. We will take it for what it is worth. (Plaintiffs except.)

Mr. Padway: I think it is material, Your Honor.

The Court: What difference does it make how some other organizations are controlled and organized?

Mr. Padway: Unless I am wrong it [make] this difference, it brings about this explanation, whether you play in the pit of a theatre, or grand opera, or a traveling band, how that music is conducted and managed is an essential element in the same way. It could not be otherwise. Group music must be that way. All this talk of management is not indicative of music or anything else. That is just the explanation.

Q. What was your answer to the last question?
A. Yes.
Q. You are familiar with the rules of the union?
A. Yes, sir.
[fol. 362] Q. With reference to fixing an amount that must cover the union scale for the union sidemen?
A. Yes.
Q. And an amount to cover incidental and traveling expense? A. Yes.
Q. You were governed by that rule? A. Yes, sir.
Q. You lived up to it and obeyed it? A. Yes, sir.
Q. And that was your intention when you signed the Form B contract? A Yes, sir.

Mr. Padway: That is all.

Redirect Examination.

By Mr. Thomas B. Roberts:
Q. I take it from your cross-examination that during the few brief intervals between 1921 and the time you ceased to have an orchestra you disbanded your organization during those short intervals? A. Yes.
Q. And one of those was this theatre engagement you testified about? A. That is right.
Q. During the entire period you did have the orchestra [fol. 363] it was known as Doc Lawson's orchestra?
A. Yes, sir.

Mr. Roberts: That is all.

Witness excused.

---

Lawrence V. Greer, called as a witness on behalf of the plaintiffs, and first duly sworn by the deputy clerk, testified as follows:

Direct Examination.

By Mr. Thomas B. Roberts:

Q. Will you give the reporter your name?

A. Lawrence V. Geer.

Q. Do you have a nick name? A. Larry Geer.

Q. Are you one of the plaintiffs in the suit of Larry V. Geer and Margaret Geer against Birmingham?

A. Yes.

Q. Who is Margaret Geer?

A. Margaret Geer is my wife.

Q. She have any relation to you in business?

A. She is my partner.

Q. What business is the partnership engaged in?

A. In the operation of Ballrooms.

Q. Do you have more than one Ballroom?

[fol. 364] A. We have a summer spot, and a winter spot. We have one in Fort Dodge, and we have a summer spot that operates only about 15 or 16 days during the summer months. We have one near Rockwell City at Twin Lakes, and we have a Ballroom at Storm Lake.

Q. Give the names of those Ballrooms?

A. Elhambria Ballroom north of Rockwell City, Laramar at Fort Dodge, and we have a spot at Fort Dodge known as Expo Park Ballroom, and the Cobblestone Ballroom at Storm Lake.

Q. How long has the partnership been engaged in the operation of Ballrooms? A. Since 1938.

Q. Prior to that date did you have any connection with Ballrooms? A. Yes, sir.

Q. What was that?

A. I owned and operated them before that.

Q. Just tell the court what the general nature of the business has been during the time that the partnership has operated the Ballrooms?

A. It is a branch of the entertainment field, I think. We cater to the public and expect them to come there for their recreation and amusement for dancing.

Q. For public dancing there, is that right?

[fol. 365] A. Yes, sir.

Q. Who is the manager of the partnership business?

A. Well, we both have separate duties.

Q. Who does most of the management?

A. I do most of the management and the operation.

Q. You just tell then what you do?

A. I book the bands and handle the publicity, and the general dance floor problems.

Q. How long have you been engaged in those duties?

A. For approximately 25 years, along there.

Q. You did that when you were not operating as a partnership, is that right? A. Yes, sir.

Q. You mentioned these dances, did you hold them during the years 1941 and 1942?

A. In Fort Dodge one place is closed while the other one operates, but we always operate on a regular policy of three nights a week. We in addition operated on holidays and occasionally for some special attraction that was coming there. At the Elhambria, north of Twin Lakes, we operated only once a week; at Storm Lake we operated regularly two nights a week, and in addition occasionally on a holiday or for some special attraction.

Q. Tell the court briefly what the capacity of your Ball-

[fol. 366] room is?

A. The Elhambria, I don't recall the feet, but it is a large place, I would say we could handle 2000 or more; the Laramar Fort Dodge, I think we can handle easily 2000 people; the Cobblestone perhaps 400 or 500, and the Expo Park about the same.

Q. Now you mentioned dancing, I presume you have to have some kind of music?

A. We use dance orchestras.

Q. Do you use a house band at either of these Ballrooms? A. No, sir.

Q. Tell the court what a house band is?

A. A house band is a band that belongs on the location of the engagement, as I understand it. They are hired by an establishment to play an engagement one week, or two weeks, or longer.

Q. Ballrooms do not operate that way, do they?

A. I don't think many of them do, because we do not operate enough nights during a week to have a house band.

Q. You usually have an orchestra every night?

A. Yes. We some times repeat with bands, of course.

Q. Now the engagements involved in this action were by orchestras during the years 1941 and 1942, is that right?

A. Yes, sir.

[fol. 367] Q. Was one of these orchestras known as Al Menke's? A. Yes, sir.

Q. Les Hartman and His Orchestra? A. Yes.

Q. Jimmy Barnett and His Orchestra? A. Yes.

Q. Paul Moorhead and His Orchestra? A. Yes.

Q. Blue Barron and His Orchestra? A. Yes.

Q. Doc Lawson and His Orchestra? A. Yes.

Q. I will hand you what the reporter has marked Exhibits B-31, B-32, B-33 and B-34, and ask you if these are the contracts for the Blue Barron orchestra engagements specified in your petition on file in this case?

A. Yes, sir.

Q. All of those exhibits bear your signature?

A. Yes, sir.

Mr. Roberts: I will offer in evidence plaintiffs Exhibits B-31, B-32, B-33 and B-34.

Ex B-31
12-12-44
HE B

# Contract Blank

# CONSOLIDATED RADIO ARTISTS, Inc.

30 ROCKEFELLER PLAZA, NEW YORK CITY | 333 NORTH MICHIGAN, CHICAGO, ILL. | 9028 SUNSET BOULEVARD, HOLLYWOOD, CALIF. | 111 SUTTER STREET, SAN FRANCISCO, CALIF.

THIS CONTRACT for the personal services of musicians, made this 30th day of May, 1942

between the undersigned employer (hereinafter called the employer) and 15 (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of BLUE BARRON, according to the following terms and conditions:

Name and Address of Place of Engagement ALHAMBRA BALLROOM, TWIN LAKES, IOWA

Date(s) of Employment JULY 9TH, 1942

Hours of Employment 9:00 P. M. to 1:00 A. M.

FILED
DEC 13 1944
N. F. Reed
CLERK

Filed in

CLERK

PRICE AGREED UPON $ 400.00 GUARANTEE, WITH A RIVELE B OF 50% OF THE GROSS RECEIPTS
(Terms and Amount)

To be paid DURING EVENING OF ENGAGEMENT
(Specify When Payments Are To Be Made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer LARRY GEER

Street Address LARAMAR BALLROOM

City or State FORT DODGE, IOWA.

Phone

Accepted by Employer Larry Geer

Accepted Blue Barron
(Orchestra Leader)

By CONSOLIDATED RADIO ARTISTS, INC.
(Representative of Employees)

FORM B
44 Printed in U. S. A.

Plaintiffs' Exhibit E-31.
In U. S. District Court December 13, 1944.

291

Plaintiffs' Exhibit B-31.
Filed in U. S. District Court December 13, 1944.

| NAMES OF EMPLOYEES | LOCAL NUMBER | S. S. NUMBER | WAGES |
|---|---|---|---|
| 1. Blue Barron (Leader) | 802 | 283-10-8839 | $ |
| 2. Stanley Usher | 802 | 283-10-8831 | |
| 3. William Burkhardt | 802 | 283-10-8829 | |
| 4. Walter Kimmel | 802 | 090-09-7643 | |
| 5. William Hammond | 802 | 283-10-8835 | |
| 6. Walter (Major) Matijatko | 802 | 283-10-8841 | |
| 7. Andrew Russett | 802 | 210-07-6675 | |
| 8. James Brown | 802 | 210-07-6669 | |
| 9. Sam Bass | 802 | 111-12-5157 | |
| 10. Charles Fisher | 802 | 283-10-8836 | |
| 11. William Schiller | 802 | 073-1444228 | |
| 12. Ivan (Lane) Leventhal | 802 | 098-05-9293 | |
| | | | |
| 13. Billy Cover (Vocalist) | | 174-12-9753 | |
| | | | |

F.B. 32
12-10-41
AFM

# Contract Blank

# CONSOLIDATED RADIO ARTISTS, Inc.

30 ROCKEFELLER PLAZA, NEW YORK CITY — 333 NORTH MICHIGAN, CHICAGO, ILL. — 9028 SUNSET BOULEVARD, HOLLYWOOD, CALIF. — 111 SUTTER STREET, SAN FRANCISCO, CALIF.

THIS CONTRACT for the personal services of musicians, made this 28th day of May 194 2

between the undersigned employer (hereinafter called the employer) and 13 (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of BLUE BARRON according to the following terms and conditions:

Name and Address of Place of Engagement EXPO PARK BALLROOM, PORT DODGE, IOWA

Date(s) of Employment JULY 8TH, 1942

FILED

Name and Address of Place of Engagement EXPO PARK BALLROOM, FORT DODGE, IOWA

Date(s) of Employment JULY 8TH, 1942

Hours of Employment 8:45 P. M. TO 12:30 P. M.

FILED
DEC 1 3 1944
N. T. Reed
CLERK

PRICE AGREED UPON $ [redacted] GUARANTEE, WITH A PRIVILEGE OF [redacted] OF THE GROSS RECEIPTS
(Terms and Amount)

To be paid DURING EVENING OF ENGAGEMENT
(Specify When Payments Are To Be Made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer LARRY GENE

Street Address LAKESHORE BALLROOM

City or State FORT DODGE, IOWA

Phone

Accepted by Employer Larry Gene

Accepted CONSOLIDATED [illegible]
(Orchestra Leader)

By
(Representative of Employees)

FORM B
44 Printed in U. S. A.

Plaintiffs' Exhibit B-32.
Filed in U. S. District Court December 13, 1944.

295

Plaintiffs' Exhibit B-32.
Filed in U. S. District Court December 13, 1944.

| NAMES OF EMPLOYEES | LOCAL NUMBER | S. S. NUMBER | WAGES |
|---|---|---|---|
| 1. Blue Barron (Leader) | 802 | [redacted] | $ |
| 2. Stanley Usher | 802 | [redacted] | |
| 3. William Burkhardt | 802 | [redacted] | |
| 4. Walter Kimmel | 802 | [redacted] | |
| 5. William Hammond | 802 | [redacted] | |
| 6. Walter (Major) Watrous | 802 | [redacted] | |
| 7. Andrew Russell | 802 | [redacted] | |
| 8. James Brown | 802 | [redacted] | |
| 9. Sam Rose | 802 | 111-12-8107 | |
| 10. Charles Fisher | 802 | [redacted] | |
| 11. William Schiller | 802 | [redacted] | |
| 12. Ivan (Lou) Leventhal | 802 | [redacted] | |
| | | | |
| 13. Billy Gaver (Vocalist) | | [redacted] | |
| | | | |

EXHIBIT B-33
12-12-44
NEB

# Contract Blank

# CONSOLIDATED RADIO ARTISTS, Inc.

30 ROCKEFELLER PLAZA, NEW YORK CITY | 333 NORTH MICHIGAN, CHICAGO, ILL. | 9028 SUNSET BOULEVARD, HOLLYWOOD, CALIF. | 111 SUTTER STREET, SAN FRANCISCO, CALIF.

THIS CONTRACT for the personal services of musicians, made this 29th day of May, 1948

between the undersigned employer (hereinafter called the employer) and 18 (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of BLUE BARRON, according to the following terms and conditions:

Name and Address of Place of Engagement: COOLIDGE BALLROOM, STORM LAKE, IOWA

Date(s) of Employment: JULY 4TH, 1943

Hours of Employment: 9:00 P. M. to 1:00 A. M.

FILED
DEC 13 1944
N. T. Reed
CLERK

PRICE AGREED UPON: 600.00 GUARANTEE, WITH A PRIVILEGE OF 50% OF THE GROSS RECEIPTS DURING EVENING OF ENGAGEMENT
(Terms and Amount)

To be paid
(Specify When Payments Are To Be Made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum, supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer: LARRY GEER

Street Address: LARAMAR BALLROOM

City or State: FORT DODGE, IOWA

Phone

Accepted by Employer: Larry Geer

Accepted: Blue Barron
(Orchestra Leader)

By
(Representative of Employees)

FORM B
Printed in U. S. A.

Plaintiffs' Exhibit B-33.
Filed in U. S. District Court December 13, 1944.

299

| NAMES OF EMPLOYEES | LOCAL NUMBER | S.S. NUMBER | WAGES |
|---|---|---|---|
| 1. Blue Barron (Leader) | 802 | 233-10-8839 | |
| 2. Stanley Usher | 802 | 285-10-8831 | |
| 3. William Burkhardt | 802 | 255-10-8529 | |
| 4. Walter Kimmel | 802 | 090-03-7543 | |
| 5. William Hammond | 802 | [illegible] | |
| 6. Walter (Major) Matthews | 802 | [illegible] 8841 | |
| 7. Andrew Russett | 802 | 210-07-6675 | |
| 8. James Brown | 802 | 210-07-6689 | |
| 9. Sam Bass | 802 | 111-12-8157 | |
| 10. Charles Fisher | 802 | 258-10-8836 | |
| 11. William Schiller | 802 | 073-14-4228 | |
| 12. Ivan (Lane) Lewenthal | 802 | 066-05-9295 | |
| | | | |
| 13. Billy Gower (Vocalist) | | 174-12-9753 | |

Plaintiffs' Exhibit B-33.
Filed in U. S. District Court December 13, 1944.

301

Ex P-34 4V 12-12 1AFB

(QUADRUPLICATE)

# Contract Blank

# CONSOLIDATED RADIO ARTISTS, Inc.

30 ROCKEFELLER PLAZA
NEW YORK CITY

333 NORTH MICHIGAN
CHICAGO, ILL.

111 SUTTER STREET
SAN FRANCISCO, CALIF.

THIS CONTRACT for the personal services of musicians, made this 14th day of July 191 1

between the undersigned employer (hereinafter called the employer) and 18 (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the

leadership of BLUE BARRON according to the following terms and conditions.

FILED

DEC 1 1944

M. T. Reed
CLERK

Place of employment CORNERSTONE BALLROOM, STORM LAKE, IOWA.

Date(s) of employment TUESDAY, AUGUST 29TH, 1944

Hours of employment 9:00 P. M. to 2:00 A. M.

Price agreed upon $ 450.00 PER ARTIST, AGAINST A RIVILEGE OF FIFTY PERCENT (50%) OF GROSS RECEIPTS.
(Terms and amount)

To be paid
(Specify when payments are to be made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer [redacted]

Street Address [redacted]

City or State [redacted], IOWA.

Phone [redacted]

Accepted by Employer [redacted]

Accepted Blue Barron
(Orchestra Leader)

By CONSOLIDATED RADIO ARTISTS, INC.
Representative of Employer

FORM B

Filed in U. S. District Court December 13, 1944.
Plaintiffs' Exhibit B-34.

303

| NAMES OF EMPLOYEES | | S. S. NUMBER | WAGES |
|---|---|---|---|
| Blue Barron | Local 4 & 802 (Leader) | | $ |
| William Buckhardt | " " | 283-10-8839 | 10.00 |
| Charlie Fisher | " " | 283-10-8836 | 10.00 |
| William Hammond | " " | 283-10-8855 | 10.00 |
| Walter Majon | " " | 283-10-8841 | 10.00 |
| Ronnie Snyder | " " | 283-10-8840 | 10.00 |
| Stanley Usher | " " | 283-10-8831 | 10.00 |
| William Zarembà | " " | 283-10-8833 | 10.00 |
| William Shiller | " " | 073-14-4228 | 10.00 |
| Ralph Flannigan | " " | 210-07-6668 | 10.00 |
| Jimmie Brown | " " | 210-07-6669 | 10.00 |
| Walter Kimmel | " " | 090-09-7643 | 10.00 |
| Lamar Shewell | " " | 283-10-8837 | 10.00 |
| | | | |
| Jimmie Palmer | (Vocalist) | 241-12-2347 | 10.00 |
| | | Transportation | 75.00 |

Plaintiffs' Exhibit B-34.
Filed in U. S. District Court. December 13, 1944.

[fol. 376] Q. I will hand you what the reporter has marked Exhibit B-35, and ask you if that is not a contract dated the 28th day of January 1942 for several engagements by Les Hartman and His Orchestra at the Laramar Ballroom, and Expo Ballroom, Fort Dodge?

A. Yes, sir.

Q. And the engagements listed on the reverse side of Exhibit B-35, are those engagements specified in your complaint on file in this case? A. Yes, sir.

Q. Your name appears on the exhibit in typewritten form? A. Yes, sir.

Mr. Roberts: The plaintiffs offer in evidence Exhibit B-35.

Mr. Cohen: Did you testify that you signed this contract, Mr. Geer?

A. No.

Mr. Cohen: You accepted it on behalf of the partnership?

A. I did not testify to that, but I did do that.

The Court: No objection. Admitted.

Ours

# Contract Blank

FILED

DEC 1 1944

R. T. Reed
CLERK

Exmoor B-35
12-12-44
NKB

# AMERICAN FEDERATION OF MUSICIANS

## Local No. 334

THIS CONTRACT for the personal services of musicians, made this 28th. day of January, 1942. , 194

between the undersigned employer (hereinafter called the employer) and 7 (including Leader) musicians (hereinafter called employees) represented by the undersigned representative.

WITNESSETH, That the employer employs the personal services of the employees, as musicians severally, and the employees severally, through their representative, agree to render collectively to the employer services as musicians in the orchestra under the leadership of Les Hartmann., according to the following terms and conditions:

Name and Address of Place of Engagement Laramar & Exposition Ballrooms.Ft Dodge Iowa.

Date(s) of Employment On reverse side of Contract.

Hours of Employment 8:45 to 12:15 PM.

PRICE AGREED UPON : 70.00 each Engagement.
(Terms and Amount)

To be paid After each Engagement.
(Specify When Payments Are To Be Made)

The employer shall at all times have complete control of the services which the employees will render under the specifications of this contract. On behalf of the employer the Leader will distribute the amount received from the employer to the employees, including himself, as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the employer at or before the commencement of the employment hereunder and take and turn over to the employer receipts therefor from each employee, including himself. The amount paid to the Leader includes the cost of transportation, which will be reported by the Leader to the employer. The employer hereby authorizes the Leader on his behalf to replace any employee who by illness, absence, or for any other reason does not perform any or all of the services provided for under this contract. The agreement of the employees to perform is subject to proven detention by sickness, accidents, or accidents to means of transportation, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the employees. The employer agrees that the Business Representative of the Musicians' Local, in whose jurisdiction the musicians are playing, shall have access to the premises in which the musicians perform (except in private residences) for the purpose of conferring with the musicians. The musicians performing services under this contract must be members of the American Federation of Musicians and nothing in this contract shall ever be so construed as to interfere with any obligation which they may owe to the American Federation of Musicians.

It is agreed that all the rules, laws and regulations of the American Federation of Musicians, and all the rules, laws and regulations of the Local in whose jurisdiction the musicians perform, insofar as they are not in conflict with those of the Federation, are made part of this contract.

The employer represents that there does not exist against him, in favor of any employee-member of the American Federation of Musicians, any claim of any kind arising out of musical services rendered for any such employer. It is agreed that no employee-member of the American Federation of Musicians will be required to perform any provisions of this contract or to render any services for said employer as long as any such claim is unsatisfied or unpaid, in whole or in part. The employer in signing this contract himself, or having same signed by a representative, acknowledges his (her or their) authority to do so and hereby assumes liability for the amount stated herein.

Name of Employer Larry Gear.

Street Address

City, or State Ft Dodge Iowa.

Phone

Accepted by Employer

Accepted L. M. Hartmann
(Orchestra Leader)

By L. M. Hartmann
(Representatives of Employees)

FORM B
Printed in U. S. A.

Plaintiffs' Exhibit B-36.
Filed in U. S. District Court December 13, 1944.

307

Les Flatowers

(3)

| NAMES OF EMPLOYEES | | LOCAL NUMBER | S. S. NUMBER | WAGES |
|---|---|---|---|---|
| L.M.Hartmann. | (Leader) | 334 | 478-18-1587. | 10.00 |
| George Tims. | | " | 479-05-3524. | 8.00 |
| Eddie Anderson. | | " | 349-10-0841. | 7.00 |
| Ted Conway. | | " | 485-05-8486. | 7.00 |
| Ernest Link. | | " | 484-16-8152. | 7.00 |
| Kenneth Shepard. | | " | 479-05-3764. | 7.00 |
| Justin Perkins. | | " | 479-05-3588. | 7.00 |
| Mileage, tax, general expense. | | | | 17.00 |
| | | | | 70.00 |

Any or all dates may be cancelled on 30 Days written notice by either party

Feb.5th. March 5th. April 2nd. May 7th. June 4th. July 2nd.

August 6th. Sept.3rd. Oct.1st. Nov.5th. Dec.3rd. All 1942.

Plaintiffs' Exhibit B-35.
Filed in U. S. District Court December 13, 1944.

[fol. 379] Mr. Charlton: It is stipulated and agreed that contracts of the same form and tenor covering engagements specified in plaintiffs complaint as performed by Jimmy Barnett and His Orchestra, were executed in connection with the engagements as specified in paragraph five of plaintiffs' complaint, the form of said contracts being the same as Exhibit B-35.

Q. Now I gather that you represented the partnership in whatever dealings were had that led up to the execution of each of these contracts for these orchestras?

A. Yes.

Q. I will ask you if either you or Mrs. Geer prepared any of the contracts, that is, the printed form?

A. No, sir.

Q. From whom did you receive the contracts or contract in the case of each of these orchestras?

A. In the case of the bands that were booked directly by their own leader the contracts were received directly from the leader. Those that were booked through a booking office the contracts came to me from the booking office.

Q. Will you state whether any of these orchestras named in your petition, the six of them, [every] played engagements for you prior to the engagement specified in these contracts which have been identified and offered in evidence.

A. They all had, with the possible exception of Blue Barron, I think he had too.

Q. What can you tell the court, or do you know how long Les Hartman's orchestra had been in existence?

A. To my knowledge I would say he has been in business at least ten years prior to the engagements mentioned here.

[fol. 380] Q. What about Jimmy Barnett?

A. I would say about six years.

Q. Do you know anything about Blue Barron's orchestra?

A. I have, to my knowledge, I have known of Blue Barron's orchestra for probably ten years through trade magazines and radio programs.

Q. I will ask you if you are familiar with the style of each of these orchestras prior to the time you booked the engagements thereof? A. Yes, sir.

Q. How did you become familiar with the style of the music?

A. Through trade magazines and radio programs, and conversation with other orchestras and other dance operators, and some times through correspondence with the orchestra leaders describing their particular style.

Q. What about the booker? A. And the booker.

Q. That is where the booker handled the booking of the engagement? A. That is correct.

Q. Do you know where the headquarters of Les Hartman's orchestra is? A. Waterloo.

Q. Where is the headquarters of Jimmy Barnett?

A. I booked him through the booking office. I don't [fol. 381] know where his headquarters were.

Q. Do those bands play here throughout the middle west to [you] knowledge? A. Quite a good deal.

Q. What about Blue Barron, do you know anything about the territory his band covers?

A. To my personal knowledge I don't. From trade magazines and radio programs I know they were placed in quite a large territory, particularly in New York and New York City.

Q. What types of establishments or organizations do you know also had occasion to use Jimmy Barnett's orchestra and Les Hartman's orchestra for engagements?

A. They played at various ballrooms and civic organizations dances, firemens ball, convention parties.

Q. Those were bands playing one night stands?

A. Yes, sir.

Q. Now in the case of where any of these orchestras where the contract carries the name of a booking agency on the face of it, what can you tell us as to whether you had any conversation with the leader of those orchestras prior to the signing of the contract?

A. Well those contracts were always negotiated through the booker.

Q. You had no dealing with the leader?

[fol. 382] A. Not in regard to the booking of the band. I sometimes had conversation concerning bands.

Q. Did you have any conversation with the sidemen of any of the orchestras regarding the booking of the engagement? A. No, sir.

Q. In the cases of Al Menke, Doc Lawson and Les Hartman those engagements were not handled through a booking agent, were they? A. No, sir.

Q. In the case of the Al Menke orchestra engagement you dealt with Al Menke?

A. Yes, sir.

Q. And in the case of Les Hartman you dealt with Les Hartman? A. Yes.

Q. In the case of Doc Lawson you dealt with Doc Lawson? A. Yes.

Q. Did you have any conversation with the sidemen in any of those orchestras prior to the signing of the contract regarding the contract?

A. No, sir.

Q. Now you mentioned about the style of these orchestras, what purpose, if any, did you have in booking each of these orchestras?

[fol. 383] A. In the ballroom business we must have a variation in our form of orchestra music, and we try to secure different types of orchestra music to please different customers, and those different types of orchestra have a style that they have developed, in order to attract people to our ballrooms, and this particular style was what we were attempting to secure when we contacted these orchestras.

Q. On whom, if anybody, did you rely to bring you that style?

A. On the leader of the band.

Q. What, if anything, did you have to do, Mr. Geer, with arranging transportation of these six orchestras to the different ballrooms where their engagements were played?

A. Nothing.

Q. Any of them come by bus, do you know?

A. I think they all came by bus, with the exception of Blue Barron. He may have come on one of his engagements by privately owned automobiles.

Q. You have heard Paul Moorhead tell about his bus, and Doc Lawson tell about his bus; I suppose you have seen those buses?

A. Yes. Did you ask if I had told you about them?

Q. No. If you had seen them?

A. Yes, sir.

[fol. 384] Q. That is when they came to play these engagements, I suppose? A. Yes, sir.

Q. And to other engagements not involved in this suit, is that right? A. Yes.

Q. Do you recall whether the members of each of these orchestras wore some kind of special attire while playing the engagements? A. Yes, sir.

Q. What, if anything, did you have to do with that attire? A. Nothing.

Q. Did you at any time during the engagement of any of these orchestras have any conversation with the leader or sidemen regarding the dress or attire of the leader and the sidemen? A. No, sir.

Q. Did you have any rule in any of your ballrooms requiring the leader and sidemen to dress in any manner?

A. No, sir.

Q. And all of this you understand was true whenever these engagements were played?

A. Yes, sir.

Q. Where did the members of these orchestras sit during the playing of the engagements at one of the Geer ball[fol. 385] rooms? A. On the orchestra platform.

Q. Orchestra platform is in the ballroom?

A. Yes.

Q. What, if any, conversation did you have with the leader or members regarding the seating of the men on the band stand? A. None.

Q. Never talked about that? A. No, sir.

Q. Did you have occasion to observe that they some times had special seating arrangements for each of these orchestras?

A. They usually placed themselves in certain sections of their orchestra, the brass in one section, and the reeds in another section, and the drums some place in front or back.

Q. You had occasion to observe that while you were there? A. Yes.

Q. Do you know who placed the musicians in those places?

A. Presumably the leader. I did not.

Q. Now I believe you said that these orchestras were there to produce music for dances; what did they use?

A. Regular musical instruments that all dance bands use, saxophones, drums, trombones.

[fol. 386] Q. Did you furnish the instruments?

A. No. We have the house piano that remains there all of the time.

Q. That is the only instrument that was supplied?

A. That is right.

Q. What, if anything, did you say to the leader of each of these six orchestras regarding the instruments to be used in producing the music?

A. Nothing at all.

Q. Never gave any instruction of any kind on that?

A. No.

Q. Did you have any conversation with any of the sidemen during any of these engagements with reference to his instrument or the manner of playing it?

A. No, sir.

Q. What, if any, oral instructions did you give the leader of each of these orchestras either before or during the engagements involved in this suit with reference to the type of music to be played?

A. None whatsoever.

Q. What about the fast or slow pace?

A. They played to suit themselves to suit the crowd. That is what they were attempting to do.

Q. You never gave them any instructions?

A. No.

[fol. 387] Q. What about greater or less volume?

A. I never said anything about that.

Q. What about the specific selections to be played?

A. I had nothing to do with that.

Q. Did you give them any instructions on that?

A. No, sir.

Q. I mean by that, the leader or sidemen?

A. That is right.

Q. You never told them what particular piece to play?

A. No, sir.

Q. Is there any general understanding in the trade as to what the owner of a ballroom can do in any of those matters?

A. Well, it is generally recognized that the ballroom operator is in business to secure patrons to his place and for that purpose only he hires a band that has a distinctive style, and that is generally recognized in the business that if a ballroom operator would attempt to tell the leader of

that band how to vary his style the leader would pay no attentino to him, because it is the ambition of the leader of all bands that they want to become successful and get into what is known as the big money and they must through their own individual style and effort develop a following, and for that reason they will develop that as they see fit, [fol. 388] and they will accept no orders or instructions from any ballroom operator, and I think that is generally recognized in the business.

Mr. Padway: If the court please, we move to strike the answer, as incompetent, irrelevant and immaterial, and I want the objection to stand as being made before the answer, as it calls for the operation of all leaders, and not within the province of the witness to state, and contradicts the written contract in evidence, and it is pure speculation and conclusion.

The Court: Of course some times these things are a little difficult for the witness to express himself. Did you mean from what you said that that is what you observed about it from your own observation?

A. Yes, sir.

The Court: You are not guessing about it or giving your opinion, but it is from your own observation?

A. Yes, sir.

The Court: Overruled. (Intervener excepts).

Mr. Padway: I say that he was stating what he believed the leader had to do to build up a reputation and in building up a reputation they could not take orders from any one at all which we contend is highly speculative and can only come from the leaders themselves. It is entirely out [fol. 389] side of his scope and field and contrary to the written contract in evidence. If he wants to say that he talked with the leader, and he told him you cannot order me, that would be competent evidence, but he don't do that. I am here to say they can take orders under the rules, and I want to make my objection.

Mr. Charlton: You are an expert and enthusiastic.

Mr. Padway: I have made my objection, and the objection is made of record.

Mr. Cohen: As I understand the question was whether he understood the question in the trade as to relations between the orchestra and the establishment.

Mr. Charlton: The established custom and practice in the trade.

Mr. Cohen: It seems to me without any foundation for that, and it has to be hearsay? And furthermore, I don't think the opinion of other people is too general as to an orchestra, and is not material or relevant to the issues in this case.

The Court: It seems to me you are entirely too technical. It don't seem to me there is any question about the general makeup. It seems to me the facts are pretty well defined. There is no use trying to keep out some of the things that we all know. I don't understand we are trying to keep out [fol. 390] by some technicalities some evidence here. What we want is the general situation, and I think it is known by the attorneys what the general situation in. We don't want to put in evidence by anyone, but here is an operator of a dance hall who is dealing with these men and has had a chance to observe them and how they act, and how they act on the floor, how they acted generally, whether they acted independently or whether they put themselves under his control. All of those things are subject to observation. It seems to me you are entirely too technical on the matter that is not of a great deal of importance.

Mr. Cohen: I am technical only for the purpose of protecting the record.

The Court: You have a right to the record, of course.

Mr. Cohen: It seems to me there are plenty of men that know about that.

The Court: If he is going to be too technical withdraw it and ask him about it; go into all of the matters of what they did, and what their actions were, and what he did and observed after they arrived by bus, whether they brought their instruments with them, what they brought with them, and how they acted, and those things as he observed. You

can go into that if you want to. I will sustain that objection [fol. 391] and you can start over. (Plaintiffs except.)

Q. How long have you been in the business?

A. For approximately 22 or 24 years.

Q. And have you had occasion during that time to observe orchestras and what they did? A. Very much.

Q. How many orchestras have played at your establishments over that period would you say?

A. In the thousands.

Q. Have you had occasion to observe the conduct of the leader? A. Yes, sir.

Q. And their attitude toward you? A. Yes, sir.

Q. As the operator? A. Yes, sir.

Q. Now what can you tell the court as the result of your observations as to whether the leader would accept any direction or instruction with reference to the type of music, the fast and slower pieces, and the selection to be played, and these matters we have inquired about?

Mr. Padway: You say whether they would accept. Objected to as incompetent, immaterial and irrelevant.

The Court: Sustained. (Plaintiffs except).

Q. Well, did they accept?

[fol. 392] Mr. Padway: Objected to unless the particular leader is named, what he said to him and what the leader said.

The Court: Sustained. (Plaintiffs except).

Q. Mr. Geer, can you give an instance—. Mr. Geer, do you know what the customary practice is on the part of leaders with respect to these matters such as the type of music, faster or slower pieces, greater or less volume?

Mr. Padway: Objected to as incompetent, immaterial and irrelevant, and not going to the issues in the case, and not even provided by the agreement.

A. As I stated before, it is generally recognized—

Q. Answer that yes or no.

A. I could not give any leaders any orders. I don't know—

Q. Do you know what the general custom and practice is—

Mr. Padway: I think the witness has answered the question.

A. If you will, give me time to finish. Read it again.

(Question read by the reporter).

A. They play it to suit themselves exactly, and in order to satisfy the public whom they are trying to please in order to build up a reputation for themselves that would be pleasing to the public that come to the dances and dance to their music.

Q. They give all of the instructions on those matters, is [fol. 393] not that right, in the ballroom?

A. Who do you refer to by "they?"

Q. The leader? A. Yes, sir.

Q. You did not give any instructions regarding any of those matters? A. No, sir.

Q. What, if any, written orders or instructions did you ever give any of these orchestras? A. None.

Q. That is true you did not give any written instructions either prior to or during the performance of the engagement, is that right?

A. No, sir, that is right.

Q. What can you tell the court as to whether each of these six orchestras in playing its engagement used a public address system? A. They all did.

Q. And can you tell the court whose address system that was?

A. We have a public address system in each of our places, and all of the bands, with the possible exception of Blue Barron carried their own public address system, and in case they liked theirs better they played or used it, otherwise any public address system.

[fol. 394] Q. Did you have anything to do in regard to setting them up? A. No, sir.

Q. Give any direction with regard to setting up these public address systems? A. No.

Q. Did each of these orchestras in performing its engagement use music racks? A. Yes, sir.

Q. Did you supply those racks? A. No, sir.

Q. Someone brought them there, is that right?

A. Yes, sir.

Q. Now what instructions, if any, did you ever give the leader or members of any of these six orchestras with ref-

erence to the route used in reaching or leaving the band stand? A. None.

Q. You heard Mr. Moorhead testify that it was the custom for an orchestra playing a one night engagement to take an intermission? A. Yes, sir.

Q. Was that custom followed in the case of your ballrooms? A. Yes, sir.

Q. What can you tell the court as to whether each of [fol. 395] these orchestras did take an intermission?

A. They did, yes sir.

Q. State what order, if any, you gave the leader of any of these orchestras, or the [sidement] of these orchestras either prior to or during the engagements with reference to taking an intermission?

A. Did not give them any orders in regard to that.

Q. Did you have a room to which they are to retire?

A. No. We have a room where they store their baggage, but they can go any place they want to.

Q. You did not try to tell them about their conduct during the intermission? A. No, sir.

Q. You did not tell them? A. No, sir.

Q. Now in the case of each of these orchestras was there anything on the music racks in front of the orchestra?

A. Their music arrangements.

Q. Some kind of sheet music? A. Yes, sir.

Q. Did you have anything to do with furnishing that sheet music? A. No, sir.

Q. Now did you ever give any instructions to any leader of any of these bands, or the members of any of these [fol. 396] orchestras with reference to rehearsals?

A. No, sir.

Q. You never rehearsed any of these orchestras?

A. No, sir.

Q. Did you have occasion to observe these leaders while the orchestra was on the band stand? A. Yes, sir.

Q. What would the leader be doing there with the orchestra during the performance of the engagement?

A. He would be directing the band, running it.

Q. Some of them use a baton? A. Yes, sir.

Q. Did you observe anything with reference to his regulating the volume of music?

A. The leader took care of that.

Q. Through some manipulations with the baton, is that right?

A. Yes, generally by his hand.

Q. Who instructed the orchestra to play the dance selections? A. The leader.

Q. You observed that. Did some of these orchestras have feature numbers? A. Yes, sir.

Q. Did you have anything to do with the time that they put on their act, I mean when they did it during the course of their engagement?

[fol. 397] A. No, sir.

Mr. Padway: I think I can see now that we are not going to get through with the evidence, and I probably have to call off some train arrangements.

The Court: If you want to make some telephone calls I will give you fifteen minutes. We will take a recess of fifteen minutes.

(Recess 3:10 P. M. to 3:25 P. M.)

The witness Lawrence V. Geer resumed the stand and on further direct examination, by Mr. Thomas B. Roberts, testified as follows:

Q. Mr. Geer, calling your attention now for a moment to plaintiffs Exhibit B-22, I will ask you to examine the reverse side of that exhibit the typewritten words "Band showed up with only seven men and hired Mary Bodenstine for piano making a total of eight." These words were written by you? A. Yes, sir.

Q. Tell this court what that is a memorandum of, what the facts are?

A. I keep records on certain things of that kind, and that night the band showed up with apparently less than the number called for, and they hired someone else to fill in.

Q. Did you hire Mary Bodenstine?

[fol. 398] A. No; the band leader hired her.

Q. Mr. Geer, I hand you what the reporter has marked Exhibit B-36 and ask you if that is a summary showing the amount which the partnership paid as the contract price in the case of each engagement involved in this action? A. Yes, sir.

Q. And the information shown thereon is correct?

A. Yes, sir.

Q. According to the records of the partnership?

A. Yes, sir.

Q. Some places where the notation is "Privilege of 60 percent," that signifies the orchestra cut into the profit that night?

A. The privilege of 60 per cent means that they have the privilege of doing that. Some times they go into it and some times they don't. The record will show whether they did or not. In that instance they had the privilege of 60 per cent.

Q. In other words where it is below the figure the privilege of 60 per cent was in parenthesis, that means that night the privilege of the percent of the contract was operative? A. Yes, sir.

Q. To whom was that money paid?

A. The orchestra leader.

[fol. 399] Q. Who exercises this privilege you refer to?

A. It is in the contract—the orchestra leader.

Q. He is the one that exercised it? A. Yes, sir.

Mr. Roberts: The plaintiffs offer in evidence Exhibit B-36.

Mr. Padway: No objection.

Mr. Cohen: No objection.

The Court: It is admitted.

[fol. 400] Plaintiffs' Exhibit B-36.

Filed in U. S. District Court December 13, 1944.

| Name or Orchestra | Date of Engagement | Amount Paid As Contract Price |
|---|---|---|
| Al Menke | October 12, 1941 | $120.00 |
| | October 18, 1941 | 120.00 |
| | November 8, 1941 | 120.00 |
| | November 26, 1941 | 120.00 |
| | November 26, 1942 | 250.00 |
| Les Hartman | February 5, 1942 | 70.00 |
| | March 5, 1942 | 70.00 |
| | April 2, 1942 | 70.00 |
| | May 7, 1942 | 70.00 |
| | June 4, 1942 | 70.00 |
| | July 2, 1942 | 70.00 |
| | August 6, 1942 | 70.00 |
| | September 3, 1942 | 70.00 |
| | October 1, 1942 | 70.00 |

| | | |
|---|---|---|
| Jimmy Barnett | January 5, 1942 | 75.00 |
| | January 24, 1942 | 100.00 |
| | April 25, 1942 | 89.00 |
| | | (privilege of 60%) |
| | June 16, 1942 | 89.00 |
| | | (privilege of 60%) |
| | July 2, 1942 | 85.00 |
| | July 3, 1942 | 150.00 |
| | July 4, 1942 | 150.00 |
| | August 1, 1942 | 100.00 |
| | August 8, 1942 | 100.00 |
| | September 12, 1942 | 100.00 |
| | October 4, 1942 | 100.00 |
| | November 7, 1942 | 100.00 |
| | November 14, 1942 | 100.00 |
| | November 15, 1942 | 100.00 |
| | November 17, 1942 | 82.44 |
| | | (privilege of 60%) |
| | December 5 & 6, 1942 | 220.00 |
| | December 22, 1942 | 85.00 |
| Paul Moorhead | February 17, 1942 | 100.00 |
| | | (privilege of 60%) |
| | February 22, 1942 | 100.00 |
| | March 21, 1942 | 100.00 |
| | March 22, 1942 | 100.00 |
| | April 18, 1942 | 100.00 |
| | May 2, 1942 | 100.00 |
| | May 9, 1942 | 100.00 |
| | May 16, 1942 | 100.00 |
| | May 28, 1942 | 90.00 |
| | May 31, 1942 | 100.00 |
| | June 2, 1942 | 70.00 |
| | | (privilege of 60%) |
| | June 30, 1942 | 75.00 |
| | July 11, 1942 | 100.00 |
| | July 12, 1942 | 100.00 |
| | July 14, 1942 | 72.66 |
| | | (privilege of 60%) |
| | July 16, 1942 | 85.00 |
| | October 10, 1942 | 100.00 |
| | October 11, 1942 | 100.00 |
| | October 12, 1942 | 70.00 |
| | | (privilege of 60%) |
| | October 24, 1942 | 100.00 |

[fol. 401]

| | | |
|---|---|---|
| Blue Barron | August 26, 1941 | $554.42 (privilege of 56%) |
| | July 4, 1942 | 710.22 (privilege of 50%) |
| | July 5, 1942 | 463.30 (privilege of 50%) |
| | July 9, 1942 | 400.00 (privilege of 50%) |
| Doc Lawson | July 4, 1942 | 200.00 |

[fol. 402] Q. What, if any, conversation did you ever have with Al Menke in reference to his orchestra engagement, or Jimmy Barnett on the occasion of his orchestra engagement, or Paul Moorhead on the occasion of his orchestra engagement, or Blue Barron on the occasion of his orchestra engagement, or Doc Lawson on the occasion of his orchestra engagement, regarding the compensation of the sidemen of each of these organizations? A. None.

Q. You never talked to any of the leaders involved in this law suit about what the sidemen received for their services? A. No, sir.

Q. What conversation, if any, did you have with any of the sidemen of any of these six orchestras regarding the amount they received for the services performed in these [fol. 403] engagements at your ballrooms? A. None.

Q. Did you have any conversation with the sidemen or any of them in any of these orchestras regarding any compensation of any kind? A. None.

Q. Now on a number of these contracts there is printed information concerning the list of the members of the orchestra, the social security numbers, and in some cases amounts shown as wages on the reverse side of these contracts. What, if anything, did you have to do with preparing that information? A. Nothing.

Q. When I said printed you understood I meant the typewritten entries? A. Yes.

Q. That is true of all contracts in this action on which such typewritten entries appear on the reverse side thereof; is that correct? A. Yes, sir.

Q. Some of the contracts, of course, have no information on the reverse side; is that right?

A. That is right.

Q. In those cases where no information appears on the reverse side of the contracts in evidence in this case [fol. 404] what can you tell the court as to whether you ever received a separate memorandum from anyone showing what compensation was received by the sidemen?

A. No sir; I never got anything.

Q. And in those instances where no information appears on the reverse side of the contract, what can you tell the court as to whether you received any receipts of sidemen showing what they received for the engagements in which they participated? A. I never got anything.

Q. You never got any receipts for anything of that sort? A. No, sir.

Q. Incidentally, Mr. Geer, can you tell us what the union scale of compensation of musicians was at the Fort Dodge Local during the years 1941 and 1942?

A. I believe it was $5.00 for a three hour engagement, and after that it was fifty cents for each half hour over that. I am not definitely sure of that, but it was not over $6.00, I know.

Q. Now [—] one of your ballrooms located in the jurisdiction of any other Local of the American Federation of Musicians? A. Storm Lake is.

Q. What jurisdiction is that? A. Spencer.

[fol. 405] Q. Do you know what the union scale of that Local was for musicians performing one night engagements? A. That was $5.00 for four hours.

Q. Now, Mr. Geer, where we have amounts appearing on the reverse side of any of these contracts introduced in evidence in this cause, what can you tell the court as to whether you had anything to do with determining those amounts? A. No, sir.

Q. You had nothing to do with the amounts?

A. I had nothing to do with them; no, sir.

Q. I call your attention for the moment to plaintiffs Exhibit B-34, and specifically to the reverse side of the exhibit, and I notice in the column "Wages" the sum of $10.00 there listed opposite the names of some of the men; is that right? A. Yes, sir.

Q. What can you tell us as to whether that amount of $10.00 shown on the reverse side of Exhibit B-34 is above or below the union scale of the Spencer Local?

A. $10.00 is double the amount of the Local scale.

Q. Did you have anything to do with fixing that amount, or those amounts, shown on the reverse side of the exhibit I have just inquired about?

A. I had nothing to do with it.

Q. Wherever on any of these contracts an amount ap-
[fol. 406] pears in excess of the union scale you have testified to, what can you tell us as to whether you had anything to do with fixing that excess amount?

A. I had nothing to do with that.

Q. What can you tell the court as to whether you know what the men actually received in fact for each of these engagements?

A. Referring to that contract, that is the Blue Barron contract, Blue Barron told me at one time his men received an average of approximately $150.00 per week per man, weekly salary.

Q. He told you that? A. He told that, yes sir.

Q. What can you tell the court as to whether the plaintiffs have ever carried the names of any of the leaders or the sidemen of any of these six orchestras that have been inquired about on their payroll?

A. No, we did not.

Q. That was true during 1941 and 1942, whenever these engagements were, is that right? A. Yes, sir.

Q. Now I will ask you, Mr. Geer, what, if anything, did you have to do with selecting any of the sidemen who performed these engagements as members of these various orchestras?

[fol. 407] A. Nothing.

Q. You never talked with anyone about joining one of these orchestras, did you? A. No, sir.

Q. That is, you did not talk with anyone; is that right?

A. Yes, sir.

Q. Did you ever have a conversation with any of the leaders with reference to the selection of a sideman?

A. No, sir.

Q. That is, the sidemen of any of these orchestras?

A. No, sir.

Q. What can you tell the court as to whether you ever discharged any sideman of any of these orchestras involved in your case?

A. No, I never discharged any of them.

Q. Ever tell one of them to leave the orchestra?

A. No, sir.

Q. Did you ever say anything to Al Menke, Blue Barron, Paul Moorhead, Jimmy Barnett, Doc Lawson, or Les Hartman with reference to his discharging some sideman in his orchestra? A. No, sir, I did not.

Q. Or any particular sideman? A. No, sir.

[fol. 408] Q. You never discussed that with them?

A. No, sir, I never discussed that with them at all.

Q. Now I believe you testified earlier in this examination that most of these orchestras had played for you prior to June 1, 1941? A. Yes, sir.

Q. What difference, if any, was there in what the sidemen and leaders of these men did when they played for you prior to June 1, 1941, and what they did when they played for you on the engagements involved in this action? A. There was no difference.

Q. No difference whatever? A. No, sir.

Q. I believe in this suit you are seeking to recover the employees tax in the Federal Insurance Contribution back, as well as the employers? A. Yes, sir.

Q. What can you tell the court as to whether you ever withheld that employees tax from any of the amounts paid to the leaders, as you testified? A. We never did.

Q. That is the partnership funds?

A. Yes, sir.

Q. One further question occurs to me: I notice in all of [fol. 409] these contracts there are hours stated?

A. Yes, sir.

Q. What can you tell the court as to the practice as to whether these orchestras stayed within the hours?

A. Yes, sir.

Q. They stopped at the time specified in the contract for the engagement? A. Yes, sir.

Mr. Roberts: I believe that is all.

Mr. Padway: No cross examination.

Mr. Cohen: No questions.

Witness excused.

[fol. 410] Mr. Charlton: The plaintiffs offer in evidence the depositions of the witnesses Griff Williams, James E. Breyley, and Joseph L. Kayser, as certified and brought to court and signed by the respective reporters and now in the custody of the Clerk.

The Court: All right. They may be admitted.

Mr. Charlton: It is understood and agreed that the objections appearing in the depositions and made at the time of the taking of the depositions may stand as though made in open court.

[fol. 421] Deposition of Griffith E. Williams.

Filed in U. S. District Court September 29, 1944.

And the said,

GRIFFITH E. WILLIAMS, produced as a witness on behalf of plaintiffs, having been by me, the said Frank M. Harker, as Notary Public, as aforesaid, first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth insofar as he should be interrogated, was examined upon oral interrogatories, and he did thereupon depose, testify and say as follows, viz.:

Direct Examination.

By Mr. Roberts:

Q1. Will you give your name to the reporter?

A1. Griffith E. Williams.

Q2. Your present address?

A2. You want my business address, or my address here?

Q3. Well, your home address will be all right.

A3. 3214 Thayer street, Evanston, Illinois. My business address is Band Office Building No. 3, Great Lakes Naval Training Center, Great Lakes, Illinois.

Q4. You are at present a Lieutenant, Junior Navy Grade, in the Navy?

A4. Yes, I am.

[fol. 422] Q5. What day did you report for duty as an officer?

A5. For active duty?

Q6. Yes.

A6. On the 28th of February.

Q7. Of this year? A7. Right, 1944.

Q8. And what did you do before you entered the Navy?
A8. I was the leader of a dance orchestra.
Q9. Name the orchestra.
A9. Griff Williams and His Orchestra.
Q10. Are you the same Griff Williams who was the plaintiff in the action entitled: Griff Williams vs. United States, that was filed in the United States Court, for the Northern District of Illinois, decided about in May, 1941?
A10. Yes, I am.
Q11. That is the same case that was later appealed to the Seventh Circuit Court of Appeals?
A11. Yes, sir.
Q12. I now ask you a little history about your orchestra. Do you recall the date—I mean by that the year—when it was first assembled?
A12. Yes; it was 1934.
Q13. And who assembled it?
[fol. 423] A13. I did.
Q14. And the place where it was assembled?
A14. San Francisco.
Q15. And what year was it that the orchestra was first known as "Griff Williams and His Orchestra"?
A15. It was not well known.
Q16. When did you first start using the name, I will say?
A16. The minute it was assembled.
Q17. And that was back around 1934?
A17. 1934.
Q18. And commencing about that time, from then on, was it booked and known as "Griff Williams and His Orchestra"?
A18. With the exception of about nine months after it had been assembled—I think I am correct—it became known as "Griff Williams and Jimmie Walsh and Their Orchestra" for a period of about six or eight months.
Q19. At the first? A19. Yes.
Q20. And then after that?
A20. Then after that, this partnership ended and it became "Griff Williams and His Orchestra" again.
Q21. How long did that orchestra remain in existence?
[fol. 424] A21. Until 1944.
Q22. When you went into the Navy?
A22. Yes.

Q23. Now, during the period it was in existence, its performances consisted mainly of the playing of popular dance music? A23. Yes.

Q24. And your orchestra was organized or assembled, not for any particular engagement, but for all types of engagements?

A24. No, it was assembled originally for engagement at the Edgewater Beach Cafe in San Francisco.

Q25. For a single engagement there?

A25. Yes. Well, for steady engagement.

Q26. For steady engagement. Incidentally, what is a steady engagement?

A26. A steady engagement would be anything—I imagine you would consider a steady engagement anything from two months' duration; even two weeks in some ways it might be considered.

Q27. That is right. Do you recall whether the bylaws of the Federation of Musicians has any definition of "steady engagement"?

A27. That I don't recall.

Q28. Now, later on you did hold yourself out ready to [fol. 425-426] perform engagements for other types of establishments, is that true?

A28. Yes.

Mr. Wilson: I object to the form of the question, "he held himself out."

Mr. Roberts: I will rephrase it.

By Mr. Roberts:

Q29. Later the orchestra played engagements for other types of establishments, is that right?

A29. Specifying, rather than a cafe, ballrooms, yes.

Q30. Will you just name a few of those?

A30. I played the Aragon Ballroom, the Trianon Ballroom; and Sweet's Ballroom in Oakland, California; the Chumot Ballroom in Omaha, Nebraska; quite a few of them.

Q31. Did you also play at amusement parks?

A31. Yes.

Q32. Do you recall playing for the State Fair at Des Moines? A32. Yes.

Q33. Do you remember when that was?

A33. I played there twice; I believe in '40—1939 and 1940.

Q34. Do you recall playing at a policemen's ball in Sioux City?

[fol. 427] A34. Yes, it was 1941.

Q35. Did you sometimes play for American Legion Post dances?

A35. Yes; in Clinton, Iowa.

Q36. You sometimes played for colleges?

A36. Yes. Want me to name some?

Q37. You may name one or two.

A37. University of Iowa; I played for the University of Nebraska at Lincoln; Texas A. & M.

Q38. When we say you played, we refer, of course, to you and your orchestra, is that correct?

A38. Right.

Q39. And these engagements during the later years of the orchestra's existence occurred at various intervals during those years, is that right?

A39. Yes.

Q40. And those engagements usually were how long in duration; that is, in ballrooms and amusement parks?

A40. One or two days. Amusement parks—I would specify that I played four weeks to five weeks at amusement parks.

Q41. Now, if a ballroom wanted a dance, or a Legion Post, that would be one or two days?

A41. One or two days, generally.

[fol. 428] Q42. And those are known in the trade as single engagements?

A42. Single engagements, or one-nighters.

Q43. One-night stands? A43. Yes.

Q44. You might also give the names of a few hotels at which your orchestra appeared during the years of its existence.

A44. Mark Hopkins, San Francisco; Stevens Hotel in Chicago, Baker Hotel in Dallas, Texas; Copley-Plaza Hotel, Boston; and the Palmer House in Chicago.

Q45. You were playing at the Palmer House when you received your Commission in the Navy, isn't that correct?

A45. No. I was at the Chase Hotel in St. Louis.

Q46. Chase Hotel, St. Louis?

A46. Yes.

Q47. During the years that your orchestra was in existence, did you sometimes play music over the radio?

A47. Yes.

Q48. Over national hook-ups?

A48. Yes.

Q49. I believe you appeared on occasions with the Fitch Band Wagon, did you not?

[fol. 429] A49. Yes.

Mr. Cohen: Will the Court know what Fitch's Band Wagon is?

By Mr. Roberts:

Q50. What is the Fitch Band Wagon program?

A50. The Fitch Band Wagon program is a program sponsored by the F. W. Fitch Company.

Q51. Of Des Moines, Iowa?

A51. Of Des Moines, Iowa, built around different dance orchestras and their histories.

Q52. What can you tell us, Lt. Williams, as to whether your band was known in the trade as a "Name Band"?

A52. There have been times when it has been considered a name band, I imagine; and times when I felt very definitely it was not a name band.

Q53. Well, during the later years, say from 1938 on—

A53. During the year 1938 there were certain times, definitely, when it was not a name band.

Q54. Why do you say that?

A54. Nobody ever heard of it; I could not even get a job.

Q55. You mean the orchestra was unable to secure engagements?

[fol. 430] A55. Yes.

Q56. That was not true in 1940 or 1941, was it?

A56. No.

Q57. Would you say it was a name band during those years?

A57. Well, I think a name band is pretty darned hard—it is a pretty difficult line there; I would say it was better known; I could secure engagements on the strength of its name.

Q58. It was well known in the middlewest, wasn't it?

A58. Yes, it was well-known in the middlewest.

Q59. And pretty well-advertised in the middlewest, wasn't it? A59. Yes.

Q60. You certainly did not regard yourself as a territorial band, did you?

A60. Well, you will have to specify what you mean by a territorial band.

Q61. Well, you did not regard your band as a local band?

A61. No. But nobody in the world—nobody in Atlanta, Georgia, knew what Griff Williams' Band was; very few in New Jersey or down in New York, or in New England. It was well known around the middlewest, and in the west [fol. 431] of course it was well known.

Q62. So that you were—

A62. So in these different periods where we had been broadcasting constantly, we were well known.

Q63. Now, do you recall your orchestra playing an engagement at the Crystal Ballroom in Dubuque, Iowa, in October of 1940?

A63. I know we played two engagements there, October, 1940.

Q64. Yes.

A64. I could not be sure of the date.

Q65. You recall it was in the fall?

A65. Yes, I do.

Q66. And that there was another one in the following year? A66. Yes.

Q67. Say, in September? A67. Yes.

Q68. Of 1941? A68. Yes.

Q69. Incidentally, Dubuque is the same town in which you played one of the ballroom engagements involved in your suit against the United States, is that correct? Do you recall the Melody Mill?

A69. Yes, I guess so. That was in '38.

[fol. 432] Q70. 1938? A70. Yes.

Q71. You played an engagement in the same town, Melody Mill? A71. Right.

(A document was handed to the witness.)

Mr. Roberts: Perhaps we better have the reporter mark that, Lieutenant. Mark that as an exhibit.

(The document produced was marked by the Notary Plaintiffs Exhibit A for Id., F. M. H., and handed to the witness.)

Mr. Roberts: Mark this one.

(The document produced was marked by the Notary Plaintiffs Exhibit B for Id., F. M. H.)

By Mr. Roberts:

Q72. I hand you what the reporter has marked Plaintiffs' Exhibit A, and ask you to examine that document and tell us what it is, if you know?

A72. It is a contract for an engagement at the Crystal Ballroom, October 13, 1940, at the town of Dubuque, Iowa.

Q73. That is a contract for the engagement by your orchestra?

[fol. 433] A73. Griff Williams and His Orchestra.

Q74. Having refreshed your recollection by examining the contract, is the date October 13th the date in 1940 that your engagement was played? A74. I believe so.

Q75. I hand you what the reporter has marked Plaintiffs' Exhibit B (handing document to the witness) and ask you to examine that document and tell us what it is, if you know.

A75. It is a contract for an orchestra under the leadership of Griff Williams.

Q76. What is the date on that contract; that is for the engagement?

A76. For September 1, 1941, to play a performance at Crystal Ballroom in Dubuque, Iowa.

Q77. Do you recall that that is about the time that you played that engagement, October 1st, 1941?

A77. Yes, it was—it was September.

Q78. September 1st, I beg your pardon. I now ask you to examine both contracts and tell us whether they are the same in their provisions.

Mr. Cohen: I object to that question. The contracts speak for themselves.

A78. The contracts are a great deal different. The second contract states the employer employs the personal [fol. 434] services of the employes as musicians severally.

By Mr. Roberts:

Q79. The provisions are not at all alike, are they?

A79. No, they are not.

Q80. When did you first know that the provisions were different?

A80. The minute the new form contract came out.
Q81. Do you recall when that was?
A81. I believe it was in June.
Q82. Of 1941?
A82. I believe so. It became effective then.
Q83. Who told you about it?
A83. I believe they were sent from the union.
Q84. And who is the union?
A84. American Federation of Musicians.
Q85. Were forms sent to you? A85. Yes.
Q86. And some kind of instructions to use that form?
A86. I don't remember what they were, if there were; something I was familiar with.
Q87. At least, you know you were informed by the union to use that form? A87. Right.
[fol. 435] Q88. After June of 1941? A88. Yes.
Q89. That is, in contract engagements? A89. Yes.
Q90. All engagements by your orchestra after June of 1941 were on a form similar—
A90. Yes.
Q91. —to the form shown in Exhibit B?
A91. Yes, sir.
Q92. Do you know who prepared that contract?
A92. No, sir.
Q93. It was not prepared by you? A93. No.
Q94. The contract marked Exhibit A was not prepared by you, either, was it? A94. No, sir.
Q95. You know nothing about how the revisions, the changes, came about between those two contracts, do you?
A95. No.

Mr. Cohen: I object to the series of questions as being leading in character.

By Mr. Roberts:
Q96. Now I hand you, Lt. Williams, both contracts, with [fol. 436] the words in large capital letters, "Music Corporation of America"; do you find them there? (Handing documents to the witness.)
A96. Yes.
Q97. What do they signify?
A97. They are my agents.
Q98. Booking agents? A98. Booking agents.

Mr. Cohen: May I ask, Mr. Roberts, if these questions are for the purpose of identifying the exhibits?

Mr. Roberts: No. It is for the purpose of asking him something about the booking.

Mr. Cohen: The exhibits have not been introduced in evidence yet.

By Mr. Roberts:

Q99. Do you know who filled in the blanks on each of those contracts?

A99. Who filled in the blanks?

Q100. Yes.

Mr. Cohen: That is objected to on the same ground.

The Witness: A100. It is done by the Music Corporation of America.

By Mr. Roberts:

[fol. 437] Q101. Who was your booking agent?

A101. Who were my booking agents.

Q102. Now, when you refer to the Music Corporation of America as your booking agent, just tell us what they did; what it did in that capacity.

A102. They were responsible for securing the engagements for Griff Williams and His Orchestra.

Q103. Did you have an agreement with the Music Corporation of America— A103. Yes.

Q104. —making it your booking agent?

A104. Yes, booking agent.

Q105. That is exclusive? A105. Exclusive.

Q106. Was that agreement oral or written?

A106. Written.

Q107. Do you recall the date it was made?

A107. No, I don't.

Q108. Can you give us an approximate date? That is, by year.

A108. I have been under their management since 1935.

Q109. Down to the time that you were commissioned in the Navy? A109. Yes, sir.

[fol. 438] Q110. Was there just one contract during that entire period? A110. No.

Q111. How many were there? A111. I believe three.

Q112. Were the members of your orchestra parties to any of those contracts? A112. No, sir.

Q113. Now, one of those contracts was in existence during October of 1941, was it not? A113. Yes, sir.

Q114. Was that any different from the booking contract you had with MCA during 1940?

A114. I don't know. Some place along there I signed another contract. I could not tell you the date of that. We can look it up.

Q115. We could find that date from MCA?

A115. We could.

Q116. But you don't know whether or not there was any change?

A116. Some place, I don't know whether it was 1941 or 1942. There was no other.

Q117. Made with MCA?

A117. Right.

Q118. Between you and MCA?

[fol. 439] A118. Right.

Q119. Did the members of your orchestra ever give MCA a power of attorney?

A119. I don't know.

Q120. Do you know? You don't know about that.

(Two documents produced were marked by the Notary, respectively, Plaintiffs' Exhibit C for Id. F.M.H. and Plaintiffs' Exhibit D for Id. F.M.H., and handed to the witness.)

The Witness: Are they both the same?

Mr. Roberts: Practically.

By Mr. Roberts:

Q121. I now hand you what the reporter has marked Plaintiffs' Exhibits C and D, and ask you to examine them and tell us whether or not you have ever seen anything like these documents before?

A121. Yes, I have seen them before. They are press manuals.

Q122. For whose orchestra?

A122. For Griff Williams and His Orchestra.

Q123. Do you know who prepared them?

A123. They were prepared by Music Corporation of America.

Q124. Did you give them the information contained in [fol. 440] these manuals?

Mr. Wilson: I object to that. They have not been put in the record.

The Witness: Do you want me to answer?

Mr. Roberts: At this time I will offer in evidence Plaintiffs' Exhibit C.

Mr. Wilson: To which I will object, on the basis it is immaterial and irrelevant.

Mr. Roberts: The plaintiffs also offer in evidence Plaintiffs' Exhibit D.

Mr. Wilson: The same objections, for the same reasons.

(The said documents, so offered in evidence, marked, respectively, Plaintiffs' Exhibit C for Id. F.M.H. and Plaintiffs' Exhibit D for Id. F.M.H., are attached hereto and made a part hereof.)

By Mr. Roberts:

Q125. Who gave Music Corporation the information contained in these exhibits, Plaintiffs' Exhibits C and D?

A125. They gleaned that from the material I gave them and got it from press releases, and I know that on occasion they got some information from checking with the men in the orchestra.

[fol. 441] Q126. You, of course, did not permit the Music Corporation of America to send out statements that were not true, did you?

A126. Well, I tried not to; but sometimes they would get a story where that was not absolutely the truth, something about diving off the bridge in California, I found once, that I did not do.

Q127. That would be exceptional, wouldn't it?

A127. Well, yes.

Q128. I mean, most of the statements were true ones, though?

A128. Most of the statements were true, yes. They would take a turn that maybe I would blush.

Q129. Are there any other statements in these manuals that you would say were untrue?

A129. I would have to peruse them carefully, to see what was in them.

Q130. I will ask you to look at page 5.

Mr. Wilson: My objection is running to the whole line of questioning.

Mr. Roberts: That is all right.

By Mr. Roberts:

Q130. I show you page 5 of Plaintiffs' Exhibit D (handing document to the witness), and ask you to examine the statements on that page and tell us whether they were [fol. 442] true.

Q130. Yes. But as to—with this reservation; as to statements on "loud music" would apply to engagements in a cafe or hotel, night clubs.

Q131. In other words, the loud-played music was out in a cafe or night club?

A131. Yes.

Q132. The other statements appearing on that page are correct, I believe you stated?

A132. Yes.

Q133. That same page appears in Plaintiffs' Exhibit C as page 5, does it not (handing document to the witness)?

A133. Yes.

Q134. I note page 2 of Exhibit C, and also page 2 of Exhibit D, states: "This band, which recently smashed all records at the world's largest hotel, the Stevens in Chicago, has been a favorite of 'straight' music fans at choice hotels, night clubs, theatres throughout the country, including, among others, the exclusive Aragon and Trianon Ballrooms, Chicago; the Peabody Hotel, Memphis; the Chase Hotel, St. Louis; the Netherland Plaza, Cincinnati; the Banker and Adolphus Hotels, Dallas; Elitch's Gardens, Denver; Palomar and Victor Hugo's in Los Angeles; the [fol. 443] the Schroeder Hotel, Milwaukee; and the Mark Hopkins in San Francisco where they stayed for four years."

What can you tell us as to whether that statement is correct?

A134. We did smash all records at the Stevens Hotel in Chicago.

Q135. You played those other engagements?

A135. And we played these other engagements, and we stayed at the Mark Hopkins in San Francisco for four years, but not in a continuous stretch.

Q136. Do you know when these manuals were prepared?

A136. No, I do not; after 1939.

Q137. Do you find from an examination of page 1 of Plaintiffs' Exhibit C this statement:

"The releases so far made by Griff have been very successful and can be heard on juke boxes throughout America. We believe it is safe to predict the Griff Williams band will be one of the top orchestras for 1942."

What can you tell us as to whether that statement indicates something as to the date when that manual was prepared?

A137. It was probably prepared in 1942.

Q138. Early 1942 or—

[fol. 444] A138. I don't know.

Q139. Or late 1941?

A139. I should guess the early part of '42.

Mr. Wilson: Objection; he is just guessing.

By Mr. Roberts:

Q140. Are you just guessing at that? You know it was after 1939, both of them were prepared?

A140. Yes, sir.

Q141. But you cannot tell the exact date, is that right?

A141. No.

Q142. Now, one more question with reference to these two manuals, Lt. Williams. Who paid for them?

A142. The Music Corporation of America.

Q143. Well, did you reimburse them?

A143. No; not that I know of.

Q144. Your commission covered these manuals?

A144. Yes.

Q145. That is, fees that were coming to your booking agent?

A145. Yes.

Q146. Do you know what these manuals were used for?

A146. They were press manuals sent out in promoting the attraction.

[fol. 445] Q147. Advertising your band, is that right?

A147. Yes.

Q148. In local communities where the band was to appear?

A148. Yes. They were sent to the promoters who might be interested in securing the services of the orchestra.

Q149. They were also used after an engagement was booked, too, weren't they, to advertise stories about the engagement?

A149. For the employers, yes. They were sent to the employers of the orchestra, who would in turn use them in press releases.

Mr. Roberts: I move to strike his references to the employers of the orchestra as a volunteer statement of the witness and a statement of his opinion and conclusion.

By Mr. Roberts:

Q150. The manuals were used for advertising purposes, were they not? A150. Yes, they were.

Q151. For your band? A151. Yes.

(A photograph produced was marked by the reporter as [fol. 446] directed Plaintiffs' Exhibit E for Id. F. M. H.)

By Mr. Roberts:

Q152. I now hand you what the reporter has marked Exhibit E (handing document to the witness), and ask you to examine it and tell us what it is, if you know.

[Q152.] It is a picture of me, of myself.

Q153. Do you know when that picture was taken?

A153. I believe that was—no, I don't; I don't know.

Q154. Was it after 1939?

A154. Yes, it was after '39; it was after 1940.

Q155. What was the picture like this used for, if you know? A155. Display.

Mr. Wilson: We object to it; we object to it going in.

By Mr. Roberts:

Q156. Do you know who prepared this picture?

A156. That particular copy of it?

Q157. Plaintiffs' Exhibit E.

A157. It was prepared by MCA. I had the picture taken and paid the photographer for the original picture.

Q158. That print?

[fol. 447] A158. But that print was made by MCA.

Mr. Roberts: Plaintiffs offer in evidence Plaintiffs' Exhibit E.

Do you object to that?

Mr. Wilson: Yes. The objection is it is immaterial.

(Which said picture, so offered in evidence, marked Plaintiffs' Exhibit E for Id. F. M. H., is attached hereto and returned herewith.)

By Mr. Roberts:

Q159. What were pictures like this print, like this, used for? A159. For display.

Q160. That is, by establishments contracting engagements for your orchestra, is that right?

A160. Yes.

Q161. In the local communities? A161. Yes.

Q162. Where your orchestra appeared?

A162. Yes.

Q163. The print might appear in the front of the ballroom, or somewhere, in advance of the engagement?

A163. That is right.

[fol. 448] (Photographs produced by counsel for plaintiffs were marked by the Notary, respectively, Plaintiffs' Exhibits F, G, H and I, for Id. F.M.H.)

By Mr. Roberts:

Q164. I now hand you what the reporter has marked Plaintiffs' Exhibits F, G, H and I (Handing photographs to the witness), and ask you to examine them and tell us what they are, if you know.

A164. These are publicity photographs of various members connected with our organization, who were further classified as vocal stars, vocalists, featured players.

Q165. When you say "featured player" —

A165. Featured musician.

Q166. What do you mean by that, Lieutenant, "featured musician"?

A166. They were a part of the group of key men. I don't know how to put that. What I mean by featured musicians, they were the stars of the entire organization.

Q167. They sometimes performed solos, did they?

A167. Yes.

Q168. During an engagement?

A168. Both on their instruments and vocally.

Q169. Who told them to do that?

[fol. 449] A169. Well, generally the arrangement was written that way; according to how the musical arrangements were planned, which eventually came under my direction.

Q170. Well, you during the course of the playing of that particular piece, told them when to take a chorus, or something like that?

A170. Not at the moment.

Q171. Did they do that automatically?

A171. Yes, because it was written in the musical arrangement.

Q172. And who secured the musical arrangements?

A172. I did.

Q173. And did you tell the fellow who made the arrangement to make it in that manner?

A173. Not always.

Q174. But many times it was?

A174. Many times.

Q175. Do you know who told these featured musicians to have their pictures taken?

A175. No, I don't. I don't know whether I told them I don't know; or MCA, or sometimes they came up and said, "Here is a picture; can't I get on the Billboard?"

Q176. Well, you may have told them, is that right?

[fol. 450] A176. Could have; but I don't remember actually doing it.

Q177. Plaintiffs' Exhibit F is a picture of Walter King, is that right? A177. Yes.

Q178. And he was a featured vocalist and drummer?

A178. Yes.

Q179. Plaintiffs' Exhibit G is another picture of Walter King, is that right (handing exhibit to the witness)?

A179. Yes.

Q180. And Plaintiffs' Exhibit H is a picture of Julius Herman (handing exhibit to the witness)?

A180. Yes.

Q181. What instrument did he play?

A181. Trombone, and vocalist.

Q182. And Plaintiffs' Exhibit I is a picture of Bob Kirk (handing exhibit to the witness); what was he?

A182. Saxophone, Clarinet and Vocalist.

Q183. Those are the featured players?

A183. Yes.

Q184. And Bob Kirk, Julius Herman, Walter King were members of your orchestra at the time the two engagements we have asked about—

[fol. 451] A184. Yes.

Q185. —at the Crystal Ballroom were played?

A185. Yes.

Mr. Roberts: Plaintiffs now offer in evidence Plaintiffs' Exhibits F, G, H and I.

Mr. Wilson: I will not object to those.

(Which said pictures, so offered in evidence, marked, respectively, Plaintiffs' Exhibits F, G, H and I for Id. F.M.H., are attached hereto and returned herewith.)

By Mr. Roberts:

Q186. Do you know what these pictures were used for?

A186. Display.

Q187. The same purposes as the pictures of yourself, is that correct? A187. Yes.

Q188. That was to advertise and publicise the orchestra, is that right? A188. Yes.

(Two paper instruments, produced by counsel for plaintiffs, were marked by the Notary, respectively, Plaintiffs' Exhibit J for Id. F.M.H. and Plaintiffs' Exhibit K for Id. F.M.H.)

[fol. 452] By Mr. Roberts:

Q189. I hand you now what the reporter has marked Plaintiffs' Exhibit J, and ask you to examine it and tell us what that is, if you know (handing exhibit to the witness)?

A189. That is a mat, sent out to the purchasers for the purpose of publicising Griff Williams and His Orchestra.

Q190. That is, the purchasers of your orchestra's music, is that right? A190. Yes.

Q191. MCA prepared that? A191. Yes.

Q192. I will ask you to look at Plaintiffs' Exhibit K (handing exhibit to the witness); do you find that is another mat?

A192. That is another mat, for a picture of myself.

Q193. Yes. It was also sent out —

A193. Used for publicising.

Q194. As was Plaintiffs' Exhibit J?

A194. Yes.

Q195. Those mats were sometimes printed in a local paper? A195. Yes.

Q196. That was the purpose of that, was it not?

[fol. 453] A196. Yes.

Q197. To publicise the attraction when it came to town?

A197. Yes.

Q198. To play an engagement at some ballroom or some establishment?

A198. They were always sent out by MCA prior to the engagement.

Q199. For publicity purposes? A199. Yes.

Mr. Roberts: Plaintiffs offer in evidence Plaintiffs' Exhibit J and Plaintiffs' Exhibit K.

Mr. Wilson: Objected to as immaterial and irrelevant.

(Which said mats, so offered in evidence, marked, respectively, Plaintiffs' Exhibit J for Id. F.M.H. and Plaintiffs' Exhibit K for Id. F.M.H., are attached hereto and returned herewith.)

By Mr. Roberts:

Q200. Now, Lt. Williams, is there a trade-name for the members of the orchestra, other than the leader, some kind of a name?

A200. You mean they are called side men?

[fol. 454] Q201. That is the customary name, isn't it?

A201. Yes.

Q202. Now, during the years 1940 and 1941, did you have any changes in the personnel of your orchestra?

A202. Yes.

Q203. You had men that had been with the orchestra leaving the organization, and new ones taking their place?

A203. Yes. I don't think there were very many during that period.

Q204. A few, isn't that right?

A204. Probably. I would have to get my records out to be sure.

Q205. You know in the course of a year there would be a few changes?

A205. I have gone periods of a year or better without changing any person.

Q206. They remained constant, is that right?

A206. Right.

Q207. Now, when you did have occasion to make a replacement, did you talk with some prospective musician?

A207. Yes. I would inquire about to see who might fit the vacant chair.

[fol. 455] Q208. Ask him what instrument he played?

A208. Yes.

Q209. Something about his experience?

A209. Tried to find out as much as I could about his experience and his ability, and what he might do, how he might well fit the product we had to offer.

Q210. In a conversation of that sort, did you talk about the matter of his pay?

A210. Yes.

Q211. Then you finally told him he would be all right, or words to that effect?

A211. I would tell him—

Mr. Cohen: I object to the series of questions as being leading in character.

By The Witness:

A211. Well, I would tell him what the general setup was, the type of jobs we were working and generally what they would pay. I never signed a contract with any single man, never had one.

By Mr. Roberts:

Q212. Did you make any kind of an agreement with him when he did become a member of the band?

A212. No further than what the union specifies.

Q213. That is the minimum scale?

[fol. 456] A213. Minimum scale and the two weeks' notice.

Q214. Did you ever pay any of your men more than the union scale?

A214. Well, yes.

Mr. Wilson: I object to this form of question. I will straighten it out on cross-examination. Go ahead.

By Mr. Roberts:

Q215. At the time that you selected one of these men, or talked to him about joining your organization, did you discuss the period that he would be a member?

A215. Only to say, "Well, now, if we get together, let's [staty] together. I don't want to take you into the organization and bulid an entertainment around you if you are not happy here, or if I am not happy with you." But I never committed myself to any particular length of time, nor did anybody commit themselves to a length of time.

Q216. If they came in, it was orally agreed or understood, as long as his services were satisfactory, is that right, they would be a member?

A216. As long as the services were satisfactory and everybody was happy, there would not be any changes.

[fol. 457] Q217. On this matter of pay, did you discuss whether the musicians would be paid daily, or weekly, or monthly; what can you tell us about that?

A217. Well, the union stipulates that. It generally is weekly; and they have to be paid weekly with one-night stands; they are supposed to be paid at the conclusion of the engagement; the union stipulates that.

Q218. Perhaps I misunderstand you. Did you turn money over to these men after every one-night stand?

A218. Many times; often I did. Sometimes, by their own choice, they would say, "Well, I would like to wait a week and give it all to me at once".

Q219. Sometimes you did pay them by the week, though?

A219. Yes. They were always paid by the week on what we called steady engagements.

Q220. That would be engagements, other than one-night stands, is that correct?

A220. Yes.

Q221. I will ask you to examine Plaintiffs' Exhibit B again (handing exhibit to the witness), and tell us how many musicians appeared at that engagement, if you know?

Mr. Wilson: I object. I don't know—

[fol. 458] By The Witness:

A221. I am not sure I know.

Mr. Cohen: Before you answer that, Lieutenant—

The Witness: I could figure it out.

Mr. Cohen: I object to the questions addressed to Exhibit B. It has not been introduced in evidence as yet, as I understand it.

Mr. Roberts: I will offer in evidence Plaintiffs' Exhibit B.

Mr. Cohen: No objection.

(Which said document, so offered in evidence, marked Plaintiffs' Exhibit B for Id. F.M.H., is attached hereto and returned herewith.)

Mr. Roberts: I will also offer in evidence Plaintiffs' Exhibit A.

Mr. Cohen: The Government objects to the admission in evidence of Plaintiffs' Exhibit A on the grounds it is immaterial to the issues in this case.

Mr. Wilson: We also object on the same grounds.

(Which said document, so offered in evidence, marked Plaintiffs' Exhibit A for Id. F.M.H., is attached hereto and [fol. 459] returned herewith.)

By Mr. Roberts:

Q222. Do you know, Lt. Williams, how many musicians were in your orchestra at the time you played the engagement on September 1, 1941, at the Crystal Ballroom?

A222. Twelve men and myself, plus myself.

Q223. What can you tell us as to when the twelve men became members of your orchestra?

A223. As to when they did?

Q224. Yes; with reference to this date of September 1st.

A224. I think I had a girl singer there. Do you want me to include that?

Q225. You may have had a girl singer?

A225. I may have had a girl singer.

Q226. In addition to the twelve musicians?

A226. I am sure I did.

Mr. Roberts: Will you read that question, please?

(The former question as above recorded was read, as follows:

"Q. What can you tell us as to when the twelve men became members of your orchestra?")

[fol. 460] By The Witness:

A226. Most of them became members of my orchestra between February 1st and June 1st of 1939.

By Mr. Roberts:

Q227. In other words, prior to July 26, the date—

A227. Yes.

Q228. —July 26, 1941, the date of the contract?

A228. Yes.

Q229. They had been with you some time?

A229. Yes.

Q230. Now, when a man left your orchestra, did you have occasion to talk with him sometimes?

A230. I don't understand how you mean.

Q231. When some man left your orchestra, did he come to you?

A231. Yes, he came to me.

Q232. What would he say?

A232. [I] would say that, "I want you to give me notice."

Q233. At other times did you have occasion to want to get rid of a man?

A233. Yes.

Q234. What would you do on those occasions?

A234. I would say, "I am sorry, I have to give you your notice".

[fol. 461] Q235. You would tell him, is that right?

A235. Yes.

Q236. And that was true during the year 1941; I mean, that practice?

A236. The custom was; whether I ever used it, I don't know.

Q237. But if a man was—did leave your organization—

A237. Yes.

Q238. —at your request, why, you followed that practice that year, is that right?

A238. Yes.

Q239. Now, when you took in a new man, did you tell him when he was to start to play with the orchestra?

A239. Yes.

Q240. That is, you would name some date?

A240. Yes.

Q241. When he would appear with the orchestra, and you would so inform him, is that right?

A241. Yes.

Q242. Incidentally, who generally determined the number of men in your orchestra?

A242. Generally MCA.

Q243. Your booker?

[fol. 462] A243. Yes. I would always want more.

Q244. You would always want more. Now, on the occasion of the two engagements we have inquired about by your orchestra at the Crystal Ballroom, who picked out the selections of dance music that were played?

A244. Those two engagements?

Q245. Yes.

Mr. Cohen: I object to any questions on this, about engagements in 1940 on the ground it is immaterial and irrelevant to the particular issues in this case.

By The Witness:

A245. Well, I imagine—I picked the groups.

By Mr. Roberts:

Q246. You picked the groups the orchestra played?

A246. Yes.

Q247. And that was true with respect to each engagement, is that correct?

A247. Yes.

Mr. Wilson: The objection runs to the whole line.

Mr. Roberts: That is all right.

By Mr. Roberts:

Q248. These selections were taken from some kind of a [fol. 463] musical library? A248. Yes.

Q249. Who did the library belong to, Lieutenant?

A249. My property.

Q250. Your personal property?

A250. Yes.

Q251. I presume that it contained arrangements of popular numbers?

A251. Yes.

Q252. Past and present, probably?

A252. Right.

Q253. Those are the arrangements that you selected from somewhere?

A253. Yes.

Q254. I suppose you paid somebody to prepare the arrangements?

A254. Right.

Q255. And then they were placed in the library?

A255. Yes, that is right.

Q256. You mentioned the groups. Did you have some order in which the selections were played?

A256. Well, often the manager would come up and say, "Now, mix them up; don't play all waltzes", so I would give them some waltzes, several times during the evening, and play some fast and some slow ones. It was up to me to [fol. 464] please the people.

Q257. Do you recall that Mr. Bartels ever told you that?

A257. Yes; he must have.

Q258. "He must have", or do you know definitely?

A258. If you ask me the hour and the minute, I don't know it.

Q259. He might have?

A259. He probably did. As a matter of fact, it was my custom to come up and say, "Have you got any suggestions? Do they like what we are doing"?

Q260. Have you any recollection that Mr. Bartels told you to play certain pieces?

A260. I believe I have.

Q261. What did he say to you?

A261. "Mix them up, Griff."

Q262. Who told you that?

A262. Bartels did.

Q263. Roy?

A263. Roy Bartels, yes. You would go up to the manager and say, "What do they like?"

Q264. That is, the dancers?

A264. Yes; "What do they want to hear?" You would also ask him when he wants the band to take intermission.

[fol. 465] Mr. Roberts: I move to strike the last statement as a volunteer statement of the witness, and not in response to any question.

The Witness: All right, excuse me.

By Mr. Roberts:

Q265. Now you had certain instrumentation in your orchestra, of course.

A265. Yes.

Q266. Did you decide that?

A266. Yes.

Q267. That is, the planning of the instruments?

A267. Yes.

Q268. What instruments should be used. Now, did you on the occasion of each of these two engagements of the Crystal Ballroom attempt to have your orchestra play what might be termed a distinctive style of music?

A268. Insofar as our arrangements were distinctive, yes.

Q269. Well, you did try to have some kind of distinctive style, didn't you?

A269. Yes.

Q270. Something to that effect in these publicity manuals, isn't there?

A270. Yes.

[fol. 466] Q271. And you determined your instrumentation with that in mind, didn't you?

A271. Yes.

Q272. And you did that, isn't that correct?

A272. Yes.

Q273. And you had previously, I believe, as you have testified here, selected the musicians that you thought would follow the type of music you would produce?

A273. Right.

Q274. And of course you attempted to secure arrangements—

A274. Yes.

Q275. —which would permit the orchestra to play that distinctive type of music you wanted to produce; and that was true on both engagements, was it not?

A275. Yes.

Q276. That you tried to develop a distinctive type of music, or type of music?

A276. Band music, fundamentally.

Q277. Pardon?

A277. Yes.

Q278. Did your orchestra have a theme song?

A278. Yes.

[fol. 467] Q279. Did you pick that?

A279. I wrote it.

Q280. You wrote it. I suppose that was played at the beginning and end of each engagement?

A280. It was played at the beginning of each engagement. It was played—It was interspersed in the arrangements throughout the evening.

Q281. Throughout the evening. And you worked that out for the orchestra, is that right?

A281. Yes.

Q282. Now, I observe on Plaintiffs' Exhibit E that you have something in your hand in that picture.

A282. Yes.

Q283. What is that?

A283. That is a baton.

Q284. What is a baton used for?

A284. A baton is used in conducting an orchestra.

Q285. Who conducted the orchestra on the occasion of each of these engagements?

A285. I did.

Q286. At Crystal Ballroom?

A286. I did.

Q287. That is the engagement on October 13, 1940?

A287. Yes.

Q288. And the engagement on September 1, 1941?

[fol. 468] A288. Yes.

Q289. And in using the baton, did you direct the musicians in the manner in which they should play?

Mr. Cohen: I object to that question as being leading.

Mr. Wilson: It calls for a conclusion.

Mr. Cohen: So far as it is concerned with anything other than the September 1st, 1941, I object as being immaterial to the issues in this case, and also as being immaterial to the issues in this case and not the best evidence of the manner in which they performed, inasmuch as the contract speaks for itself.

By The Witness:

A289. I tried to. They did not always do what I told them to.

By Mr. Roberts:

Q290. That is what you were doing up there with the baton, isn't that right?

A290. Yes.

Q291. Now, sometimes you sat at the piano, is that right?

A291. Yes.

Q292. Because you play the piano yourself?

A292. Yes.

[fol. 469] Q293. Who determined the tempo of the orchestra?

A293. I did.

Q294. And how was that done, Lieutenant?

A294. Well, as we started each group, I would beat the tempo off with my feet; as we started each number I beat it then with my feet, "1, 2" (illustrating).

Mr. Roberts: I wish we could get that in the record.

By Mr. Roberts:

Q295. If you sat at the piano, I suppose you did it a little differently?

A295. Usually I would just play my own introduction on the tempo.

Q296. Some kind of "plunk, plunk" on the piano, I suppose?

A296. Yes.

Q297. In other words, that tells the orchestra when to begin?

A297. Yes.

Q298. Is that right? I suppose you tell them when to stop?

A298. I never said, "Stop".

Q299. But you gave them some kind of a stop?

A299. When there were no more notes on the page, [fol. 470] they stopped.

Mr. Wilson: All together?

The Witness: It is to be hoped.

By Mr. Roberts:

Q300. Then you stopped leading, too, didn't you?

A300. Yes.

Q301. Now, the orchestra sometimes played loud?

A301. Yes.

Q302. During a piece?

A302. Yes.

Q303. And sometimes soft?

A303. Yes.

Q304. And you had some way of indicating that?

A304. Yes.

Q305. How is that done?

A305. By means of the hand, or vocally, I would say, "Give it"! or, "s-s-s-s-s-s-s". Of course, it was generally written in the music, how, to indicate it.

Q306. But that is how you would do these things you just described, is that right?

A306. Yes.

Q307. You also mentioned you had some featured members?

A307. Yes.

Q308. When a musician would take a solo on his in- [fol. 471] strument, or would stand up, is that right?

A308. When we had featured numbers, they were a planned part of a small floor show, part of a presentation.

Q309. Was that planned ahead of time?

A309. Yes.

Q310. Who determined that? That is, the actual execution of the featured number?

A310. Who determined it to be played?

Q311. No.

A311. Who planned what was to be presented?

Q312. Yes.

A312. I did.

Q313. Did your orchestra have any rehearsals before it appeared at Crystal Ballroom for the engagement of September 1, 1941?

A313. Not for that particular engagement.

Q314. You had had some earlier, or prior to that time during the year, hadn't you?

A314. Oh, yes.

Q315. You had rehearsed from time to time, hadn't you?

A315. Certainly.

Q316. Who told your musicians when there was going to be a rehearsal?

[fol. 472] A316. I did, generally.

Q317. Did you tell them where the rehearsal would take place?

A317. Generally. It does not always hold true.

Q318. But generally it would be true?

A318. Generally.

Q319. At these rehearsals, did you make suggestions as to how the instruments should be played?

A319. Yes.

Q320. Working out some chords, I suppose, and harmonies?

A320. Yes.

Q321. You would attempt to make suggestions as to the production of certain musical effects, is that right?

A321. Correct.

Q322. And you would try the piece over to accomplish those effects?

A322. Right.

Q323. And that was under your direction?

A323. Yes, it was.

Q324. What can you tell us, Lt. Williams, as to whether, in order to achieve these musical effects, the members of your orchestra would have to have a certain seating arrangement on the bandstand; was that necessary?

[fol. 473] A324. It was because of the microphones.

Q325. Who determined where the musicians would sit?

A325. I did.

Q326. You told them about that. Incidentally, did you carry a portable microphone system?

A326. Yes.

Q327. A portable address system?

A327. Yes; at times.

Q328. Well, at these one-night stands?

A328. Not always.

Q329. Do you recall whether you did during 1941?

A329. No.

Q330. You don't remember that?

A330. I don't remember.

Q331. Who owned the address system, when you did carry it?

A331. When we did carry it?

Q332. Yes.

A332. It was mine.

Q333. It was your own personal property?

A333. That is right.

Q334. Now, do you recall at the time of the engagement on September 1, 1941, at the Crystal Ballroom, did your side men have uniforms on?

[fol. 474] A334. I think so.

Q335. Then they were dressed uniformly, is that right?

A335. Yes.

Q336. That was true of the engagement in October of 1940?

A336. I think so.

Q337. Who picked out the uniforms?

A337. We had a committee within the orchestra itself.

Q338. Did they secure your approval or consent?

A338. Yes.

Q339. Did you make any suggestions about them?

A339. Probably.

Q340. You told them how to sit—that is, the sitting arrangements on October 1, 1941, at the Crystal Ballroom?

A340. Yes, I did.

Q341. Now, when your orchestra appeared for these engagements, of course it had to be transported there, didn't it? A341. Yes.

Q342. Can you tell us who arranged for the transportation of the orchestra on each occasion?

[fol. 475] A342. Yes, sir; I did.

Q343. You did?

A343. Generally I did.

Q344. You did for both of these engagements, is that correct?

A344. As far as I know.

Mr. Wilson: That is objected to, the arrangement of October, 1940. I object to any question directed to that.

By Mr. Roberts:

Q345. So far as you know, you arranged for the transportation of the orchestra at Dubuque on each occasion?

A345. Yes, I know that I did in September, 1941, and it is possible that the Music Corporation of America did it the year before.

Q346. Who paid the money to the transportation agency? A346. I did.

Q347. Do you recall who told the members of the orchestra where to report after they got to Dubuque?

A347. After they got to Dubuque?

Q348. Yes.

A348. I did.

Q349. Did you tell them the time?

[fol. 476] A349. Yes.

Q350. That was true of the engagement of October 13, 1940? A350. Yes.

Q351. And September 1, 1941?

A351. Yes.

Q352. Now, I note from a recital in the contract marked Plaintiffs' Exhibit B, that the price agreed upon was $350 guaranty, with a privilege—with a 60 percent privilege, of the gross receipts.

A352. Yes.

Q353. You also find mention of a $125 deposit.

A353. Yes.

Q354. In the contract?

A354. Yes.

Q355. To whom was that paid, if you know?

A355. The Music Corporation of America.

Q356. Did the Music Corporation of America take its commission out of that amount?

A356. I don't remember.

Q357. What was ordinarily true where they receive commission?

A357. Generally so. I mean, after finishing up, say that was a tour or engagement, then the first thing, the auditor of the Music Corporation and myself would go into a huddle [fol. 477] and we would find out how much they owed me and how much I owed them—

Q358. You would have an accounting?

A358. We would have an accounting, yes.

Q359. And any surplus they paid over to you at that time?

A359. Yes; and sometimes there were made deposits on commissions.

Q360. And you would owe them?

A360. And I would owe them.

Q361. That happened in 1940 and 1941?

A361. What do you mean?

Q362. That practice with the auditor?

A362. Yes.

Q363. In other words, you carried an account with MCA, didn't you?

A363. Yes.

Q364. Do you find from an examination of Plaintiffs' Exhibit A that the contract price for that engagement was $300, with a privilege of 60 percent of gross receipts, guarantee?

Mr. Wilson: I am going to object to that question.

By The Witness:

A364: Yes.

[fol. 478] By Mr. Roberts:

Q365. And was there a deposit fee in the case of that engagement?

Mr. Wilson: I object.

By The Witness:

A365. Yes.

By Mr. Roberts:

Q366. $150? A366. Yes.

Q367. And that was paid to MCA?

A367. Yes.

Q368. And credited to your account?

A368. Yes.

Q369. On MCA's books?

A369. Yes.

Q370. Now, in the case of the engagement of October 13, 1940, to whom was the balance of the contract price paid?

A370. To myself.

Q371. And was that also true of the balance of the contract price in the case of the engagement of September 1, 1941? A371. Yes.

Q372. Do you recall whether these payments were made in cash or by check?

[fol. 479] A372. I believe they were made in cash.

Q373. On each occasion? A373. I think so.

Q374. Of course, your men received some money for services in playing each of these engagements, did they not? A374. Yes.

Q375. What was the medium of payment to them?

A375. Generally cash.

Q376. Generally cash. Sometimes though you used check? A376. Yes.

Q377. Whose check was that? A377. Mine.

Q378. On your account? A378. Yes.

Q379. And the amount which you paid them, whether it was by check or in cash, was the amount previously agreed to pay them when they became members of your orchestra, is that right?

Mr. Cohen: I object to that question as being leading.

By The Witness:

A379. Not always. The men there were given agreements for that one night.

[fol. 480] By Mr. Roberts:

Q380. You mean they received a different amount every night? A380. In many cases.

Q381. In many cases they did not, though, didn't they?

A381. What?

Q382. In many cases they didn't, too, didn't they?

A382. Yes, in many cases they did not. That is nothing—there was no set rule on that.

Q383. Didn't they receive some kind of a fixed amount?

A383. The union scale would vary from that at different places for one night.

Q384. I believe you said you paid over the union scale.

A384. In places.

Q385. Did you in 1941?

Mr. Wilson: I object to the conclusion he paid above the union scale, that Mr. Williams paid above the union scale.

By The Witness:

A385. There were times that the men were paid over union scale in 1941, yes.

By Mr. Roberts:

[fol. 481] Q386. And you determined that?

A386. Usually I did.

Q387. So that the amount that was paid them was the amount that you had determined, isn't that right?

A387. Yes.

Q388. And that was true whether you paid them by check or by cash, wasn't it? A388. Yes.

Q389. Where did you pay them? A389. Where?

Q390. Yes.

Mr. Cohen: I object.

By The Witness:

A390. It might have been any place.

Mr. Cohen: I object to this series of questions unless it is limited to the engagement of September 1, 1941, on the

ground that it is confusing, and it is immaterial to the issues in this case what was done between Mr. Williams and the side men on any other occasion.

By Mr. Roberts:

Q391. I asked, Mr. Williams, do you have any way of determining whether during the week of September 1, [fol. 482] 1941, you paid the men by check or by cash?

A391. Yes, I do. I have records on it.

Q392. You do? A392. Yes.

Q393. And you cannot tell now, from your own recollection, how they were paid that week, can you?

A393. No. I believe the two engagements were paid at the same time. The one at Sioux City, Iowa, and the Crystal Ballroom I think were paid at the same time.

Q394. You think now that they were paid by check?

A394. I believe so.

Q395. And that was a check on your account?

A395. Yes.

Q396. And then when you say the two engagements, you mean one engagement at the Crystal Ballroom on September 1, 1941 — A396. Yes.

Q397. — and the other engagement, some other ballroom in Sioux City — A397. Yes.

Q398. — which happened to be played that same week?

A398. The same week.

[fol. 483] Q399. Now, I presume that the proceeds of the engagements varied from week to week, did they? That is, during 1940 and 1941; the take of the orchestra varied, didn't it?

A399. When you are doing one night stands, yes.

Q400. Yes. Some weeks it was more, and other weeks it was less? A400. Yes.

Q401. After the expenses were paid, such as commission and MCA, and the transportation expense, and any other charges, possibly advertising, and then after the side men were paid was there sometimes something left?

A401. Yes.

Q402. And who received that? A402. I did.

Mr. Wilson: I am going to object to that question; it is confusing and I think it embraces a good number of questions, talking about paying for advertising, and so on. We don't know who paid for advertising.

By Mr. Roberts:

Q403. Well, your orchestra had some expenses, didn't they? A403. Travelling, yes.

[fol. 484] Q404. And that was true in the case of the engagement of September 1, 1941, was it not?

A404. Yes, there were expenses.

Q405. After the payment of these expenses and the side men — A405. Yes.

Q406. — some money remained, is that true?

A406. Yes.

Q407. Can you tell from the amount — the price for that engagement, whether there was something remained after that one? A407. I believe so.

Q408. And you received that, is that right?

A408. Yes.

Q409. Now, were there ever occasions when the take was not enough to pay these expenses?

Mr. Cohen: I object to that question as calling for an answer on matters which are not in issue in this case and, therefore, immaterial.

Mr. Wilson: The same objection.

By The Witness:

A409. Well, yes. But there was always enough to supply the union scale for everybody around, including myself.

[fol. 485] By Mr. Roberts:

Q410. Didn't you ever take a loss on an engagement?

A410. Yes, I have.

Q411. Who stood the loss? A411. I had to.

Q412. Is that true in 1941?

A412. I don't know.

Q413. You cannot tell without looking at your books?

A413. Yes.

Q414. But that was the practice. If there was a loss, you stood it, isn't that right? A414. Yes.

Q415. In fact, you had a loss at one time, in the Victor Hugo Hotel?

Mr. Wilson: I object. It is immaterial. I object to the whole line of questioning.

By The Witness:

A415. Not below the union scale.

By Mr. Roberts:

Q416. You took a beating in that case, didn't you?

A416. I didn't do very well, no.

Q417. I mean, Lieutenant, you so testified in this other suit?

[fol. 486] A417. Yes.

Q418. Now I notice that in each of the contracts, that is, the one marked Plaintiffs' Exhibit A and Plaintiffs' Exhibit B, there is a reference to "Sixty percent privilege". A418. Yes.

Q419. Will you just tell us what that means?

A419. Well, that means if 60 percent of the gross receipts were more than the guaranty, he has the privilege of the excess of the stated $350.

Q420. That is, in the case of the engagement of September 1, 1941?

A420. That is right. I could exercise the privilege of taking 60 percent of the gross receipts, rather than the $350, flat price, for the engagement.

Q421. And if you did exercise that privilege, did your side men receive more money for the evening's engagement? A421. Generally.

Q422. Not always though, is that right?

A422. I don't remember.

Mr. Wilson: I object to that.

By Mr. Roberts:

Q423. You don't remember about that?

[fol. 487] A423. No.

Mr. Wilson: Stick to the particular engagement involved.

By Mr. Roberts:

Q424. As a matter of fact, do you know whether you got into the privilege on either one of these engagements at Crystal Ballroom?

A424. Well, I don't think so.

Q425. Were you during the year 1940 a member in good standing in the American Federation of Musicians?

A425. Yes.

Q426. And were you also such a member during the year 1941? A426. Yes.

Q427. And were the side men of the orchestra during 1940 and 1941? A427. Yes.

Q428. Members in good standing? A428. Yes.

Q429. Of the American Federation of Musicians? A429. Yes.

Q430. I will ask you one further question regarding Plaintiffs' Exhibit B (handing exhibit to the witness). Calling your attention to the form on that contract, is that [fol. 488] agreement known as the American Federation of Musicians Form B contract, if you know?

A430. Yes, it is. Can we go back to that Victor Hugo discussion? I didn't come out with a loss, but I didn't make what I intended to make on it; I didn't make enough for a good living.

Q431. Didn't you testify in your other suit you took a beating?

A431. I did. It was because I did not make what I intended to make on it.

Q432. Would anything happen to you, so far as your membership in the American Federation of Musicians is concerned, had you used some other form of contract than Form B? A432. I don't know.

Mr. Wilson: I object.

By Mr. Roberts:

Q433. You don't know? A433. I don't know.

Q434. Do you know whether your by-laws required you after June 1, 1941, to use Form B?

Mr. Wilson: I object. They speak for themselves.

By the Witness:

[fol. 489] A434. I don't know.

By Mr. Roberts:

Q435. You don't know. What can you tell us, Lieutenant—and this is probably one of the last questions, believe it or not—was there any difference between these two engagements by your orchestra, at Crystal Ballroom, so far as you know, other than the Form B contract?

A435. In the execution of them?

Mr. Wilson: I object.

By Mr. Roberts:

Q436. Yes. That is, the actual playing of them.

Mr. Wilson: I object.

By the Witness:

A436. Very little.

By Mr. Roberts:

Q437. They were the same, weren't they?

A437. Fundamentally so.

Mr. Roberts: Fundamentally the same. I have no more direct examination.

(At the hour of 11:40 o'clock a. m., September 21, 1944, a recess was taken to 1:00 o'clock p. m. of the same day, September 21, 1944.)

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[fol. 490]

Great Lakes Station,
September 21, 1944,
1:00 o'clock p. m.

Met pursuant to recess.

Present: Mr. Roberts.
Mr. Cohen.
Mr. Wilson.

And thereupon the following further proceedings were had herein:—

GRIFFITH E. WILLIAMS, a witness heretofore called and sworn on behalf of the plaintiffs, resumed the stand and further testified as follows:

Direct Examination (Ctd.)

By Mr. Roberts:

Q438. Lieutenant, did you testify in your suit against the United States as follows:

"Q. You spoke of taking a beating at the Victor Hugo. As I understand, they got into financial difficulty there. You sustained some loss in that engagement, did you not?

"A. Yes.

"Q. But for the time that you played you paid your men, did you not?

[fol. 491] "A. I had to."

Did you so testify in that case?

19-13,124-25-27.

A438. I believe I did. But, "sustaining a loss" I was wrong there because I did not sustain an actual loss because the union won't even allow you to; but I did not make what I intended to make.

Q439. But you did want to convey that you had to pay your men on account of union regulations, is that right?

A439. I wanted to convey—I took a beating.

Q440. As a matter of fact—

A440. I had to pay my men, yes, according to what the union specified I had to pay them.

Q441. And that was true in 1941, was it not?

A441. Yes.

Q442. During all that year?

A442. Yes; I had to pay the men what the union set as the minimum.

Mr. Roberts: Well, that is all.

Cross-Examination.

By Mr. Wilson:

Q443. At this engagement you say you took a loss. What was the name of that place?

A443. The Victor Hugo.

[fol. 492] Q444. The Victor Hugo. That was played in what year? A444. 1938.

Q445. That was in 1938?

Mr. Cohen: To clear the record on that, if I may at this point, Mr. Wilson, I would like to ask:

By Mr. Cohen:

Q446. Did you refer then to the year 1938 as the time you had to pay your men, regardless of what you got from the purchaser of the music? A446. I can't—

Q447. Do I understand correctly, that when you answered Mr. Roberts that you sustained a loss, inasmuch as you had to pay your men union wages, regardless of the income you derived from your engagement at the Victor Hugo, you were referring to the year 1938?

A447. At any time you would have to pay—

By Mr. Wilson:

Q448. In this particular instance?

A448. In that particular instance, yes; yes.

By Mr. Cohen:

Q449. You were referring to 1938? A449. Yes.

[fol. 493] By Mr. Wilson:

Q450. In your contract with the Victor Hugo, who furnished the muesic; was it a contract similar to this which you have identified as Form B contract? A450. No.

Q451. And which is in the record as Exhibit B?

A451. No.

Q452. It was not according to this? A452. No.

Q453. Now, you said on direct examination that there were oftentimes when the personnel of your orchestra has been changed; is that correct? A453. Yes.

Q454. Now then, the personal changes and a new musician joins the orchestra; is he guaranteed by you that he will receive any set wage whether the orchestra plays or not? A454. No, he is not.

Q455. You haven't any agreement with any members of the orchestra, pursuant to which they receive any wages from you in the event that the orchestra is not playing any engagement? A455. Never.

Q456. In other words, the only time the men receive any compensation whatsoever is—

[fol. 494] A456. When they work.

Q457. —when they work. That is, when the orchestra plays an engagement?

A457. They receive compensation.

Q458. They receive compensation?

A458. But I never had an agreement further than that.

Q459. Have you ever guaranteed any of them that they would be paid a certain amount of money for an engagement?

A459. On a specific engagement, yes.

Q460. On a specific engagement? A460. Yes.

Q461. You assumed the responsibility of them receiving the money, is that correct? A461. Yes.

Q462. Now, were you guaranteed any set amount of money on any engagement? A462. Yes.

Q463. Did you ever play an engagement in which you were not guaranteed a certain amount of money?

A463. No.

Q464. What is the minimum amount of money that you were guaranteed on every engagement?

A464. The minimum has been always been the scale [fol. 495] for all—union scale for all members concerned, plus any transportation expenses incurred while getting there.

Q465. In other words, you were always guaranteed union scale? A465. Always.

Q466. Does that vary in different parts of the country? A466. Yes.

Q467. And if the union scale in Chicago happens to be $10 a night for the leader, are you always guaranteed $10 a night? A467. Yes.

Q468. Is that over and above any commission that you might be obligated to pay MCA? A468. Yes.

Q469. And any travelling expenses? A469. Yes.

Q470. In other words, you are guaranteed, the union scale goes to you for the work performed, over and above all expenses? A470. Right.

Q471. Do you advise the establishment in which the music is furnished the amount of travelling expenses— [fol. 496] A471. Generally, yes.

Q472. —accrued when you go? A472. Yes.

Q473. And you at no time have guaranteed any wage or salary to any side man as a regular income? A473. No.

Q474. And will their salary, waige, vary according to the union scale in different localities around the country? A474. Yes, it has.

Q475. And they can get $50 a week in some places and seventy in another? A475. Yes.

Q476. To make the record clear: The commission for MCA is figured over and above union scale then? A476. For myself and the orchestra, yes.

Q477. Yes. In other words, if you do not get— you get union scale. If you get no more than union scale, then you do not pay more than ten percent to MCA? A477. That is right.

Q478. There were certain pictures submitted here in the record. Did you pay for any of these? A478. No.

Q479. Did you pay for any of the publicity for the [fol. 497] orchestra? A479. No.

Q480. Who pays for that, do you know? A480. The different operators.

Q481. The different operators?

A481. MCA put out those particular pictures, and they sent the different operators or promoters mats and the press booking, and then the promoters themselves pay the expense of having the ads printed in the paper.

Q482. Who were the Williams Warblers?

A482. The Williams Warblers were a trio of singers.

Q483. In your orchestra?

A483. Yes. They were sometimes a quartet.

Q484. And sometimes a quartet. Were they otherwise?

A484. Jules Herman; Herman was then in the Warblers.

Q485. Was Walter King in it? A485. Yes.

Q486. Jules Herman, you say? A486. Yes.

Q487. Was Griff Williams in it? A487. No.

Q488. Walter King? A488. No.

[fol. 498] Q489. And Bob Kirk?

A489. No.

Q490. You say that there had been some changes in the personnel of your orchestra at times. Were any of the members of the orchestra obligated to remain with you?

A490. Not past their usual two weeks' notice.

Q491. What is the two weeks' notice?

A491. That is a stipulation made by the union, a regulation that should I like to make a change, I should give a man two weeks' notice, and if he would like to leave the organization he would say, "I am giving you two weeks' notice." You could not hold him past that.

Q492. You had no contract with any—

A492. Not other than that.

Q492. —on the side which would compel them to remain in the orchestra?

A493. No.

Q494. Now, did the side men receive any daily or weekly or monthly wage?

A494. Any what?

Q495. Daily, weekly or monthly wage?

A495. On a steady engagement they received a weekly wage.

[fol. 499] Q496. On a steady engagement a weekly wage?

A496. Yes.

Q497. If you were playing steady engagements, they would earn their money in the orchestra?

A497. As we went along.

Q498. When you said on direct testimony that you had taken a loss, what did you mean by that?

A498. I meant I hadn't made what I hoped to make.

Q499. But you did make union scale?

A499. Yes.

Q500. In other words, you hoped to make over and above union scale on such contracts as the one at Crystal Ballroom, which provided for gross?

A500. Yes.

Q501. And if the gross did not come up to expectations, you received only scale?

A501. That is right.

Q502. In other words, you considered that a loss?

A502. I did, because that was hardly enough to live on.

Q503. Were all members of your orchestra members of the American Federation of Musicians?

A503. Yes.

Q504. At all times?

A504. Yes.

[fol. 500] Q505. Since you organized them?

A505. Yes.

Q506. Now, when you played an engagement, such as the one played at the Crystal Ballroom on September 1st of 1941, would you ask the manager just what he wanted you to do?

A506. Yes; I would always meet him before we started the engagement and ask him what the crowd liked, what types of music.

Q507. What types of music his patrons liked, is that right?

A507. Yes.

Q508. And what he wanted you to play to entertain his patrons?

A508. If he had anything he wanted in there, he would tell me.

Q509. You wanted to find out if he had any instructions he wanted in particular, is that correct?

A509. Yes.

Mr. Roberts: I object to this as putting the words in the witness' mouth, and contrary to what he [testifed] in the previous question, and broader than the previous question. May that objection precede the previous question?

Mr. Wilson: Yes.

[fol. 501] By Mr. Wilson:

Q510. Has the operator of an establishment ever told you you would have to play loud?

A510. Well—

Mr. Roberts: Objected to as irrelevant and immaterial.

By The Witness:

A510. Yes.

By Mr. Wilson:

Q511. And has he requested that you play softer?

A511. Yes, many times.

Q512. You have complied with the requests?

A512. Yes.

Q513. For members of the orchestra to make a living, is it necessary that they have a compact group who have rehearsed together and who have played together?

Mr. Roberts: Objected to as calling for a conclusion of the witness.

By The Witness:

A513. You say for an orchestra to make a living is it necessary—

By Mr. Wilson:

Q514. For members of an orchestra to make a living, is it necessary for them to rehearse together in a regular, [fol. 502] compact group?

A514. I should say yes.

Q515. That is, to reach any amount of success?

A515. Yes. I don't see how they could—

Q516. Because of the peculiar nature of the business?

A516. It depends on what you call a living. In order to forge ahead and be a successful orchestra, they have to be a well-organized group and well-rehearsed.

Q517. Well-rehearsed. And they have to have a leader, is that correct?

A517. Correct.

Q518. You are fairly familiar with orchestras, having been in them, is that true?

A518. Yes.

Q519. For a good many years?

A519. That is right.

Q520. Does the name you present who identifies that orchestra always lead the orchestra?

A520. According to how you mean, "lead".

Q521. Stand up in front with a baton.

A521. There are some that stand up in front with a baton follow the orchestra.

Q522. And there are some that stand out in front of the [fol. 503] orchestra?

A522. That is right.

Q523. And someone else starts the orchestra?

A523. There is someone who knows what it is about in back doing the actual leading.

Q524. So the person whose name identifies an orchestra does not necessarily lead the orchestra at all times?

A524. There are cases when they do not, that is true.

Q525. Are you familiar with Glen Gray's Orchestra?

A525. Yes.

Q526. Does he stand up in front with a baton, do you know? A526. No.

Q527. He plays an instrument in the orchestra?

A527. I believe he does.

Q528. At the Crystal Ballroom, this engagement on September 1, 1941, who arranged the bandstand where the orchestra is to sit?

A528. You mean in the room?

Q529. In the room.

A529. The manager.

Q530. He places it?

A530. Bartel, Bill says, "Well, here is the bandstand." [fol. 504] Q531. And that is where you have got to play from, is that correct?

A531. Yes.

Q532. If he thought the music would sound better from the middle of the floor, do you think you could take your orchestra to the middle of the floor and play?

A532. Not if he said "no".

Q533. Now, you say that you arranged the transportation?

A533. Yes.

Q534. For the orchestra?

A534. Yes.

Q535. And with the price of the job booked always includes that cost?

A535. Yes.

Q536. So that you would be assured the scale over and above the transportation cost?

A536. Sometimes the price of the job depended on that.

Q537. But you and the men always had to be guaranteed scale? A537. Yes.

Q538. Mr. Williams, I notice that on this Form B con- [fol. 505] tract that is in the record as Exhibit B, your name is absent; is that correct?

A538. Yes.

Q539. I notice on the back of the contract there are spaces for names of employees, local number, social security number and wages. I notice that is blank also.

A539. That is correct.

Q540. On the face of the contract there is a place which says, "Accepted", and under that, in parentheses, "(Orchestra Leader)", which on this exhibit is blank also.

A540. That is right.

Q541. Is it customary, for your engagements under contracts of this type, to leave those places blank?

A541. No.

Q542. Could you explain how they happen to be blank in this instance?

A542. Well, I was on my way from Denver to the Palmer House in Chicago and played these engagements, the three of them, enroute, and evidently they did not know where to send the contracts for my signature, and so it was signed by Jim Breyley, Music Corporation.

Q543. When you say they did not know where to send [fol. 506] it, do you mean the Music Corporation of America?

A543. Well, they might have known where but not have known where it would catch up with me; I don't know. I mean, I just never got them and they were not signed. Generally they are signed. Generally there is a list of the men on the back, and often the union comes up and checks with you to make sure.

Q544. After your engagement at the Crystal Ballroom on September 1, 1941, where did the orchestra go then?

A544. To the Palmer House.

Q545. In Chicago?

A545. Right.

Q546. How long did you play there?

A546. I think it was twenty-one weeks.

Q547. Was there a Form B contract executed at the Palmer House?

A547. Yes.

Mr. Roberts: This is objected to as irrelevant and immaterial, not pertaining to any events material to this case. May that objection stand throughout?

Mr. Wilson: Yes.

[fol. 507] By Mr. Wilson:

Q548. Did you sign that form of contract?

A548. Yes.

Q549. Were the names of members of the orchestra—were the names of employees, local number and security number and wages listed on the back?

Mr. Roberts: Objected to as not the best evidence.

By The Witness:

A549. Yes.

By Mr. Wilson:

Q550. At the Palmer House were you told where and how to seat the men on the stand? A550. Yes.

Mr. Roberts: May we have an objection? May the objection stand to the line of testimony relating to any inquiries respecting the witness' engagements at the Palmer House subsequent to the last engagement he played at the Crystal Ballroom? May that stand, as irrelevant and immaterial?

Mr. Wilson: You can make it broader than that. All engagements played subsequent to—you may want some in.

Mr. Roberts: Objected to as irrelevant and immaterial, [fol. 508] and not pertaining to any issue in this case, and not proper cross examination.

By Mr. Wilson:

Q551. Now, at the Palmer House were you told where and how to seat the men? A551. Yes.

Q552. Who told you where and how to seat them?

A552. Miss Abbott.

Q553. Who is Miss Abbott?
A553. She is a producer of the Empire Room.
Q554. Producer for the —
A554. For all entertainment in the Empire Room.
Q555. At the Palmer House? A555. Yes.
Q556. Did the Palmer House have you—compel you to have any special rehearsals?
A556. Yes, for the floor show.
Q557. When did they have your rehearse?
A557. We always had to be there four days before we started an engagement to rehearse there. At times there were changes in the show, or at times they wanted to add another act or something, and they would call a rehearsal.
Q558. Were your men paid for these rehearsals?
A558. Yes, we were.
[fol. 509] Q559. Would they tell you the time they wanted you to rehearse? A559. Yes.
Q560. And the place, too, that they wanted you to rehearse? A560. Yes.
Q561. Did they tell you when to make intermissions?
A561. Yes.
Q562. Did they tell you where the men were to go during intermissions? A562. Yes.
Q563. Did they allow the men to mingle with the guests? A563. No.
Q564. Were you permitted to? A564. Yes.
Q565. Did you act as master of ceremonies?
A565. Yes.
Q566. They told you what duties to perform as such?
A566. Yes.
Q567. Did they specify the type of music that they wished played? A567. Yes.
Q568. How many times did you play at the Palmer House since September 1 of 1941?
[fol. 510] A568. Three extended engagements.
Q569. Will you tell the approximate duration of each of the three?
A569. Well, the first one was twenty-one weeks; the second one was nineteen weeks, and the third one forty-four weeks. I think that is right.
Q570. And in each of these engagements the same is true about telling you where to sit? A570. Yes.
Q571. And about sitting and rehearsals, and so forth?

A571. Yes.

Q572. Now, did you play at any other hotels in and around the country? A572. Yes.

Q573. What hotels since September 1, 1941?

A573. The Chase Hotel of St. Louis; the Baker Hotel in Dallas; Copely-Plaza Hotel in Boston.

Q574. The Plaza in Cincinnati?

A574. No, — yes, that is all right; that is 1941.

Q575. Generally—and in your engagements with these hotels, did you use Form B contracts? A575. Yes.

Q576. That was executed between you and the hotels? [fol. 511] A576. That is right.

Q577. And did you sign the contract?

A577. Yes.

Q578. And you always were named, and the members of the orchestra?

Mr. Roberts: Objected to as not the best evidence. May that precede the answers? I intended to introduce the objection first.

Mr. Wilson: Yes.

By The Witness:

A578. Yes.

By Mr. Wilson:

Q579. And their local number, social security number and wage?

Mr. Roberts: The same objection. May that be shown ahead of the answer?

Mr. Wilson: Yes.

By The Witness:

A579. Yes.

By Mr. Wilson:

Q580. Now, at each of these hotels —

Mr. Wilson: I am trying to shorten this so that you can catch your train. I would like that to show in the record, too.

Mr. Roberts: Surely.

[fol. 512] By Mr. Wilson:

Q580. (Continuing) Did they tell you and the orchestra when to rehearse?

Mr. Roberts: Just a moment. I will shorten this, too. May we have a standing objection to this line of inquiry as to engagements by Griff Williams and His Orchestra after September 1, 1941, at hotels mentioned, on the ground that the questions and the testimony sought to be elicited are irrelevant and immaterial to any issue and they are not an issue in this case, and not proper cross examination. That may stand?

Mr. Wilson: Yes.

By Mr. Wilson:

Q581. Did the hotels generally tell you when to rehearse? A581. Yes.

Q582. And call a rehearsal? A582. Yes.

Q583. And control the conduct of the men?

A583. Yes.

Q584. And they told the men where they would have to go during the intermissions? A584. Right.

[fol. 513] Q585. And they directed you when you were to take intermissions? A585. Yes.

Q586. Did they also tell you how long to play any group numbers before an intermission? A586. Yes.

Q587. And generally exercised the same controls that were exercised at the Palmer House you testified to previously? A587. Yes.

Q588. Did they furnish loud speaker instruments?

A588. Yes.

Q589. They usually furnished music racks?

A589. Yes.

Q590. Furnish a piano? A590. Yes.

Q591. And the other instruments the men furnished themselves? A591. Yes.

Q592. And they owned and controlled the premises on which the services were performed? A592. Yes.

Q593. You had nothing to say about the arrangement of the bandstand and where to play?

A593. And where I played?

[fol. 514] Q594. Yes. I mean, you could not ask them to locate your orchestra in some other part of the hotel, could you?

A594. I could ask them; but they did not have to do it.

Q595. Or have the stand arranged at a different place in a particular room in which you were playing?

A595. Yes; but they have never done it.

Q596. They had full control over that, is that right?

A596. Yes.

Q597. Did the managers of these hotels give you instructions just what was expected of you and the orchestra?

A597. Yes.

Q598. Did they require uniformity of dress?

A598. Yes.

Q599. Did they tell you the type of clothes to wear?

A599. Yes, most times. You would naturally wear tuxedoes for a formal occasion. If you did not wear what you were expected to, you would soon hear of it.

Q600. Did they regulate the deportment and conduct of [fol. 515] the members of the orchestra?

A600. Yes.

Q601. Did you play any music at these hotels which was copyrighted? A601. Yes.

Q602. And a license was needed for it? A602. Yes.

Q603. Did you procure the license to play it?

A603. No.

Q604. Who procured the license?

A604. The hotel.

Q605. For the engagement played at the Cyrstal Ballroom on September 1, 1941, did you play any music that was copyrighted? A605. Yes.

Q606. Did you procure the license for that music?

A606. No.

Q607. Who procured that license?

A607. I assume the Crystal Ballroom.

Q608. Playing for these hotels, did you broadcast over the radio at all? A608. Yes.

Q609. Did they tell you when you were to broadcast?

A609. Yes.

[fol. 516] Q610. The length of time you were to broadcast? A610. Yes.

Q611. Did they require that the broadcast be submitted in advance of the broadcast?

A611. Yes; to this broadcasting station.

Q612. They required you to submit it to the broadcasting station? A612. Yes.

Q613. And did they require you to play a different type of music during the dinner hour than played during the supper hour? A613. On occasions.

Q614. On occasions? A614. Yes, sir.

Q615. Did they require you to act as master of ceremonies? I believe you testified on that. A615. Yes.

Q616. Did you have anything to do about the hiring of the floor shows? A616. No.

Q617. Did you play with the floor shows, accompany the floor shows?

A617. Yes. At the Palmer House they expected us to do that, one of our own.

Q618. At the Palmer House, did they instruct you to [fol. 517] put on one of your own?

A618. Yes, one called a little show, put on with the orchestra. At the Chase at St. Louis they would expect the orchestra to do something as a part of the floor show.

Q619. And they would ask you to do that?

A619. Yes.

Q620. Did they tell you the time at which the orchestra was to play? A620. Yes.

Q621. Start to play, and so on? A621. Yes.

Q622. Now, aside from playing in hotels during the period from September 1, 1941, to the time you went in the Navy, did you play in any theatres? A622. Yes.

Q623. What theatres?

A623. The Chicago Theatre; Orpheum Theatre in Madison, Wisconsin.

Q624. Who arranged the shows you were to put on in the theatres?

A624. Well, that varied. Generally, I mean, if you were going into a town like Madison, we arrived at eleven o'clock in the morning, and you had some acts probably to [fol. 518] rehearse, and you go and call the manager and draw up a program and after the first show you would see how it worked out at the time, and what the audience reaction was, and if it needed changing we would change it.

Q625. When you say "we", who do you mean?

A625. The management and myself.

Q626. The management would consider it with you?

A626. Right; and we worked it out.

Mr. Roberts: May we have the same objection on all this line of examination on the theatres as we had to the hotels? That is, after September 1, 1941.

Mr. Wilson: Yes.

By Mr. Wilson:

Q627. At places like the Chicago Theatre—

A627. At places like the Chicago Theatre, before we ever started our engagement, the management and I would sit down and work out a program.

Q628. The management would call you in and work out a program. And were you strictly scheduled on all these programs?

A628. Every one scheduled for time, and how much we could do and what acts might be built around the show.

Q629. Now, with the theatres, did you execute the [fol. 519] same type of contract— A629. Yes.

Q630. —that is in the record under Exhibit B?

A630. Yes.

Q631. No difference in the wording? A631. No.

Q632. The only difference being that you would have signed it, and the names of the orchestra would appear there on the back, with the other information?

Mr. Roberts: Objected to as leading and immaterial.

By the Witness:

A632. Yes. There is a theatre contract (indicating). It looks just about the same.

By Mr. Wilson:

Q633. Now, besides the hotels and theatres, did you play any other engagements?

A633. Yes. I played some ballrooms.

Q634. Were they similar to the Crystal Ballroom?

A634. The same idea.

Q635. Were those engagements played under the same type of contract? A635. Yes.

Q636. Except that they were signed by you?

[fol. 520] A636. Yes.

Q637. And the names of the orchestra— A637. Yes.

Mr. Roberts: Objected to as not the best evidence.